

**Study on the implementation of  
the Directive 2003/72/EC (employee  
involvement in the European cooperative  
society) in ten Member States**

**NATIONAL IMPLEMENTATION REPORT**



## Content

|   |           |
|---|-----------|
| <b>EXECUTIVE SUMMARY</b> .....  | <b>3</b>  |
| <b>1. BACKGROUND</b> .....  | <b>4</b>  |
| <b>2. THE CONCEPT OF COOPERATIVE IN THE NATIONAL LEGAL ORDER</b> .....                          | <b>6</b>  |
| <b>3. TRANSPOSITION INTO IRISH LAW CO-OPERATIVES</b> .....                                      | <b>9</b>  |
| 3.1 OBJECTIVE (ARTICLE 1) .....   | 9         |
| 3.2 DEFINITIONS (ARTICLE 2) .....   | 9         |
| 3.3 CREATION OF SPECIAL NEGOTIATION BODY (SNB) (ART. 3).....                                    | 11        |
| 3.4 CONTENT OF AGREEMENT (ART. 4).....  | 18        |
| 3.5 DURATION OF NEGOTIATION (ART. 5).....   | 19        |
| 3.6 STANDARD RULES (ARTICLE 7 PLUS ANNEX) .....   | 19        |
| 3.7 NATURAL PERSONS (ART. 8) .....  | 20        |
| <b>4. PARTICIPATION IN THE GENERAL MEETING OR SECTION OR SECTORAL MEETING – ARTICLE 9</b> ..... | <b>21</b> |
| <b>5. CONFIDENTIAL INFORMATION (ART. 10)</b> .....  | <b>21</b> |
| <b>6. SPIRIT OF CO-OPERATION (ART. 11)</b> .....  | <b>22</b> |
| <b>7. JURISDICTION/COMPLIANCE (ARTICLES 13 AND 14)</b> .....                                    | <b>22</b> |
| <b>8. CASE LAW</b> .....  | <b>23</b> |
| <b>9. PRACTICAL IMPLEMENTATION</b> .....  | <b>23</b> |
| <b>10. CONCLUSIONS</b> .....  | <b>24</b> |
| <b>ANNEX: CORRESPONDENCE TABLE</b> .....  | <b>26</b> |
| <b>BIBLIOGRAPHY</b> .....   | <b>28</b> |

NATIONAL IMPLEMENTATION REPORT – IRELAND

## Executive summary<sup>1</sup>

Ireland has transposed the Directive 2003/72/EC through a Statutory Instrument S.I. 259 of 2007, on the 29th May, 2007. The compulsory transposition period established by the Directive was not achieved and Ireland's transposition did not occur until May 2007.

The concept of cooperative within the Irish national legal order is complex in that co-operatives are covered by several enactments. There is no statutory requirement for Board representation in Irish private companies. The decline in trade union density in Ireland, particularly in the private sector, and a parallel expansion in individual employment rights, has meant that collective bargaining is no longer the dominant method of regulating the employment relationship in many workplaces. The cooperative sector is fragmented mainly consisting of small and medium sized companies, as well as a few large multinationals.

The Irish industrial relations model is based on social partnership and has been successful in stabilizing industrial relations in Ireland for the past two decades. The Irish model does not have a culture of information and consultation or employee involvement. Directive 2003/72/EU aims to achieve employee involvement through the establishment of special negotiation bodies in co-operative sector in Ireland, for the purpose of implementing employee involvement and employee participation.

The Irish law closely reflects the contents of the Directive. Like many other EU states, Ireland opted for a legislative model as opposed to a voluntary model involving a collective agreement, for the purpose of transposing the Directive 2003/72/EC supplementing the statute for a European cooperative society with regard to the involvement of employees. The involvement of employees in the affairs of an SCE might be established through a representative body, one or more information and consultation procedures or a participation regime.

The centrality of the employees' right to involvement in the establishment and working of a SCE constitutes one of the principles set in the Community regulation was a major issue throughout its preparation process. The right to involvement of employees in the scope of undertakings taking the form of a cooperative society is a new concept in Irish company law and Irish industrial relations.

The Directive was transposed following consultations with the social partners, mainly the Irish Congress of Trade Unions and IBEC (the employer body). Both organizations made an input to the Department of Enterprise Trade and Employment's Consultation process. There was no wider public debate on the issue. The transposition process did not create a debate in industrial relations and the transposition occurred without much notice.

---

<sup>1</sup> Report completed by Dr. Josephine Browne.

NATIONAL IMPLEMENTATION REPORT – IRELAND

## 1. Background

The co-operative sector is an important part of Irish business. Co-operatives are established to serve the interests of their members who range from consumers, producers and workers to the wider community. The principal legislation in Ireland governing industrial and provident societies (commonly known as co-operatives) is the Industrial and Provident Societies Acts (1893 to 1978). Under Irish legislation, co-operatives may be formed to carry out any industry, business or trade specified in or authorised by its rules for the benefit of its members.

According to a recent Forfas report (November, 2007) it is difficult to estimate the magnitude of the co-operative sector both in Ireland and internationally. Statistics on the sector are not readily available and there can be definitional issues. For instance, in Ireland, co-operatives have several options with regards registration:

- (i) They can register as an industrial and provident society;
- (ii) They can register as a company and include the co-operative principles in their memorandum of understanding and articles of association;
- (iii) They can choose not to register at all; and
- (iv) In addition, co-operatives may own part or all of a publicly limited company.

Forfas (2007:7) point out that the definitional issues make it difficult to collate concrete financial and employment statistics for co-operatives. Irish co-operatives vary in size, structure and their range of activities. Since 1934, the number of co-operatives (excluding credit unions) registered with the RFS has ranged between just under 500 to nearly 1,150. In 2006, there were approximately 1,040 co-operatives registered with the Registrar of Friendly Societies (RFS). In 2005, co-operatives registered with the RFS had approximately €3.8 billion in sales/income and 270,000 members (or 6% of the population). Companies associated with co-operatives had an additional €7.8 billion in turnover.

In 2005, the largest 83 co-operatives and the companies that they held shares in (predominantly agricultural) had nearly 38,000 employees. There were 525 individual credit unions in Ireland with 3,050,000 members (or 72% of the population) in 2006. Excluding credit union activity, the agricultural sector (when taken together as agricultural, farm relief and fishing societies) accounted for 98 percent of total turnover of all co-operatives registered with the RFS in 2005. They also accounted for 30% of all co-operatives registered and 65% of all co-operative members. Co-operatives also include group water schemes accounted for 30% of all co-operatives registered and 16% of all members in 2005. Promotional and developmental societies, which include community and tourist development co-operatives, accounted for 15% of all co-operatives registered and 6% of co-operative members.

The main sources of data relating to Irish co-operatives are the Registrar of Friendly Societies (RFS), the body responsible for the registration of industrial and provident societies, friendly societies and trade unions, and from ICOS, a co-ordinating organisation for co-operatives in Ireland.

## NATIONAL IMPLEMENTATION REPORT – IRELAND

According to Forfas (2007:15) there is difficulty when trying to estimate the number of co-operatives. This is because a co-operative can choose not to register (as is the case with many Resident's Associations etc) or they can register as an industrial and provident society. A third option is to register as a company and include the co-operative principles in their memorandum and articles of association. If the latter occurs, it would be difficult to identify from available statistics which of these companies are operating as co-operatives. The co-operative movement itself tends to categorise co-operatives more widely than just those that are registered as industrial and provident societies and tends to include organisations of any form that are controlled by their members and have a democratic decision making structure.

There is great variety in the size and structure of Irish co-operatives. In 1995, there were 922 co-operatives registered with the RFS. It should be noted that the agricultural sector (when taken together as agricultural, farm relief and fishing societies) accounted for 95% or more of the total turnover of co-operatives registered with the RFS for every year from 1995 through to 2005.

Traditionally, the dairy sector in Ireland is made up of co-operative enterprises. There are only around 30 significant dairy co-operatives (3% of all co-operatives registered with the RFS in 2005), it is the most dominant sector economically. The dairy sector includes hybrid co-operatives such as Kerry Group, Glanbia and the Irish Dairy Board (which together accounted for €8.2 billion in turnover in 2005). In the case of the largest co-operatives/plcs, dairy represents small amounts of their total activities. The Irish dairy co-operatives are multi-purpose in nature; they engage in dairy processing, grain handling and storage, meat processing, farm supplies and in unrelated industries such as property development.

Scale is of vital importance in many of the activities of the agri-food sector and mergers between co-operatives have been a key characteristic of the sector. In the 1980s and 90s dairy co-operatives started taking the public liability company (plc) route, establishing plcs whose shares were publicly traded with the co-operative retaining a majority shareholding. In 2006, Kerry Co-operative Creameries Limited held a 28.1% stake of Kerry Group while Glanbia Co-operative Society Limited held 54.7% in Glanbia. In addition to co-operative ownership in Kerry Group and Glanbia plcs, individual farmers and employees also hold personal shares which further increase local control. In agricultural co-operatives with a stake in a plc, the plc board normally includes senior executives from the co-operative board and active farmers. While the co-operative structure gives farmers direct control over strategy and milk prices, within the plc/co-operative model there is a constant tension between the return the plc gets and the milk price received by farmers.

According to Forfas (2007:24) worker co-operatives are viewed by some as a highly effective form of business organisation as their organisational form ensures workers have a strong personal incentive to be productive. However, worker co-operatives are in their infancy in Ireland: in 1998 there were 82 worker co-operatives assisted by the FAS Co-operative Development Unit (CDU) and this figure included enterprises registered as companies that included co-operative principles in their articles of association. No recent estimates exist on the number of workers co-operatives, but anecdotal evidence suggests it is unlikely to have increased significantly. In addition to the fact that no support unit specifically for worker co-operatives currently exists, the lack of worker co-operatives may be due to the fact that an entrepreneur establishing a new business would be unlikely to launch it as a worker co-operative. The support system for developing new businesses also

## NATIONAL IMPLEMENTATION REPORT – IRELAND

tends to be centred on the individual entrepreneur: It is argued that the key people who provide advice to new business start-ups such as accountants, bankers and employers' organisations are either ignorant of or hostile towards the concept of worker co-operatives and that, due to a lack of understanding of the form, the co-operative form is viewed as a weak business structure.

The Crafts Council of Ireland (CCoI) is not aware of any craft groups currently operating under the co-operative legislation as it exists. This experience is supported elsewhere, and it is suggested that there has been little development of co-operatives within the cultural sector in Ireland.

### **Industrial Relations in Ireland prior to legal enactment**

Ireland is sometimes classified within the voluntarist industrial relations tradition, which implies that its industrial relations model is relatively free of legal regulation. Prior to 1973 this argument could be sustained. However, following Ireland's membership of the EEC in 1973 the Irish model of industrial relations underwent substantial change including increasing legal regulation at collective and individual level and the centralization of collective bargaining from 1971.

The co-operative sector - prior to the transposition of Directive 2003/72/EU into Irish law -, did not have any formal structures of worker participation, information and consultation or employee involvement. However it should be noted that some large co-operatives arising from their scale of operation – trans European and multi national - qualify for inclusion under the Transnational Information and Consultation of Employees Act 1996. This Act was introduced to implement the EU European Works Councils Directive (94/45/EC). It regulates the information and consultation of employees on transnational matters in multinational companies, primarily through a transnational works council-type structure.

The impact of the new legislation on the Irish industrial relations model is unknown. One area which may feel the impact is the Labour Relations Commission and the Labour Court. Because the legislation dealing with co –operatives in Ireland is very complex and multifaceted, coupled with the complexities of the current enactment, any disputes arising from the operation of this enactment may be challenging for a non-legal body to deal with, and the dispute may ultimately end up in the High Court, involving considerable costs and considerable public resources.

## **2. The concept of cooperative in the national legal order**

The Irish Department of Enterprise, Trade and Employment is currently reviewing the legislative and organisational framework for co-operatives in Ireland and has issued a consultation paper (April 2009) on *Co-Operative Societies: consultation paper on the Industrial and Provident Societies Acts 1893-2005*. The objective of the review is to determine whether any changes to the present legislative (and administrative) arrangements are necessary or desirable.

The concept of cooperative within the Irish national legal order is complex in that co-operatives come within several enactments. The Industrial and Provident Societies Acts (IPSA) are the statutory system which regulated the formation and general operation of co-

## NATIONAL IMPLEMENTATION REPORT – IRELAND

operative societies in Ireland. The principal Act of the Industrial and Provident Societies Acts is a statute which was enacted in 1893. Although amended since then, most recently in 2005, it is the provisions of the 1983 Act which form the main part of the legislative system applying to co-operatives in Ireland today. The Companies Acts 1966-2006, which also apply to some co-operatives, are currently the subject of a major overhaul with the aim of replacing them by a single consolidation and reform act. There is already some linkage between the IPS Acts and the Companies Acts particularly in relation of winding up, qualifications of auditors and provisions for the conversion of societies into companies (and vice versa).

Co-operatives societies and organizations have been part of the economic and social scene in Ireland for over a century. They have played a prominent role in the agricultural sector and continue to do so, accounting for most of the €1.5 billion turnover attributable to the co-operative sector in 2005 (Forfas: 2007). Other sectors in which organizations using the co-operative model have made important contributions include housing, group water schemes and community development. This is exclusive of the major contributions made by building societies and credit unions which have their own separate legislation and, for that reason, are not included in the present report.

According to Ireland's Department of Enterprise Trade and Employment (2009:6), in Ireland co-operatives usually register as "industrial and provident societies" under the Industrial and Provident Societies Acts (IPS Acts). Registration under the IPS Acts confers incorporated status and limited liability on the registered body in the same way that the Companies Acts confer these on registered companies. The industrial and provident society, however, is a quite separate type of legal entity or person from that of the company. It is not a requirement for a co-operative to be registered under the IPS Acts. A co-operative could register as a company and some do so. Some larger co-operatives in the agricultural sector now use both legal forms in their group structures. The IPS Acts are administered by the Registrar of Friendly Societies.

The main primary legislation applying to industrial and provident societies spans the period 1893-2005. The principal Act is the Industrial and Provident Societies Act 1893, pre-dating the establishment of the Irish State by some 30 years. There have been a number of amendments to this legislation. The industrial and provident society has been closely identified with co-operatives and the co-operative movement. This is not obvious from the IPS Acts, particularly the principal Act of 1893, in which the term 'co-operative' and 'co-operative society' do not appear. According to Ireland's Department of Enterprise, Trade and Employment (2009) the current position in Ireland is that the IPS Acts may be said to cater, in practice, for two categories of society:

- a) Societies which are or consider themselves to be co-operatives. Such societies would usually use the term 'co-operative' or 'co-operative society' in their names and would be, for the most part, affiliated to a co-operative representative body such as the Irish Co-Operative Organisation Society (ICOS) or the National Association of Building Co-Operatives (NABCO) and have rules which allow the model rules adopted by those bodies.
- b) Other societies which comply with the registration requirements of the Acts.

## NATIONAL IMPLEMENTATION REPORT – IRELAND

The Department of Enterprise Trade and Employment (2009) points out that little is currently known as to why such societies should choose to register under the IPS Acts rather than the Companies Acts (other than that registration under the IPS Acts is legally open to any body meeting the registration requirements of those Acts).

The fact that Ireland has never had legislation which expressly defined the ‘co-operative’ form of association or organization has not prevented the formation and development of a strong and vibrant co-operative sector.

The closest the Industrial and Provident Societies Acts come to defining an industrial and provident society is Section 4 of the 1893 Act, which is still in force in Ireland. This confined registration under the Act to:

“a society for carrying on any industries, businesses, or trades specified in or authorized by its rules...”.

The 1978 IPS Act distinguishes between :

- (i) agricultural co-operative societies, fishing co-operative societies, certain credit union related societies and societies certified as being entitled to be treated as agricultural co-operative societies, and
- (ii) other societies.

The following is a summary of the main financial reporting obligations of societies under the IPS Acts:

- Annual Return
- Balance Sheets
- Triennial Return
- Annual Accounts.

Corporate governance within the co-operative structure refers to matters relating to the general manner in which industrial and provident societies govern or regulate themselves. These include the making and amending of rules, the distribution of powers and responsibilities within the society, the appointment and control of the committee of management (i.e. board of directors), the duties of members of the committee of management (i.e. directors), and the rights of members including voting rights.

The main public authority functions provided for by the IPS Acts are vested in the Registrar of Friendly Societies. The current work of the Registry in relation to industrial and provident societies mainly comprises the enforcement of the provisions relating to returns and accounts, registration of new societies, registration of rule amendments of existing societies, cancellation of societies, registration of amalgamations and other transactions and the maintenance of a public office for inspection of documents by the public.

### 3. Transposition into Irish law co-operatives

The compulsory transposition period established by the Directive (article 16) – August 18<sup>th</sup>, 2006 – was not respected because the Directive 2003/72/EU was transposed to Irish law on the 29<sup>th</sup> May 2007 by Statutory Instrument S.I. 259 OF 2007. The title of the Irish legislation is European Communities (European Cooperative Society) (Employee Involvement) Regulations 2007 – Statutory Instrument (S.I.) Number 259 of 2007.

The following sections are an analysis of the transposition into Irish national law of the Directive.

#### 3.1 Objective (Article 1)

This article is transposed in the introduction to S.I. 259 of 2007 which empowers the Minister for Enterprise Trade and Employment in exercise of the powers conferred by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving effect to Council Directive No. 2003/72/EC of 22 July 2003 supplementing the Statute for a European cooperative society with regard to the involvement of employees.

#### 3.2 Definitions (Article 2)

All the *definitions* for Directive 2003/72/EU are transposed directly and precisely by the Irish Statutory Instrument. The Irish law states that a word or expression used in the Irish Regulations that is also used in the Directive has the same meaning in these Regulations as it has in the Directive. The Irish Statutory Instrument S.I.259 of 2007 Part 1 Preliminary and General section transposes the definitions contained in Article 2 of the Directive, as follows:

The Irish Regulations may be cited as the European Communities (European Cooperative Society) (Employee Involvement) Regulations 2007. Section 2 sets out the definitions for the terms used in the legislation, which is similar to the terms contained in the Directive, as follows:

- “appointed” means in the absence of an election, appointed by the employees and the basis on which that appointment is made may, if the employees so determine, be such as is agreed by them with the participating legal entities, their subsidiaries or establishments, the SCE, or subsidiaries or establishments of the SCE, as the case may be; “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;
- “Commission” means the Labour Relations Commission;
- “Community” means—
  - a) the European Community, and
  - b) Norway, Iceland and Liechtenstein;
- “consultation” means the establishment of dialogue and exchange of views between the representative body or the employees’ representatives (or both) and the competent organ

NATIONAL IMPLEMENTATION REPORT – IRELAND

of the SCE at a time, in a manner and with a content which allows the employees' representatives, on the basis of the 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;

- "Court" means the Labour Court;
- "Directive" means the Council Directive 2003/72/EC of 22 July 2003 supplementing the Statute for a European Cooperative Society with regard to the involvement of employees;
- "EC Regulation" means Council Regulation 1435/2003/EC of 22 July 2003 on the Statute for a European Cooperative Society (SCE);
- "employee" means a person who has entered into or works under a contract of employment and references, in relation to a participating legal entity, its concerned subsidiary or establishment, or of an SCE or its subsidiaries, to an employee shall be read as references to an employee employed by any of them;
- "employees' representative" means a representative elected or appointed for the purposes of these regulations;
- "establishment" means in relation to a participating legal entity, a division (however described) of the undertaking physically separated from other parts of the legal entity;
- "excepted body" has the meaning assigned to it by section 6 (3) of the Trade Union Act 1941 (No. 22 of 1941), as amended;
- "expert" means an individual, and may be the holder from time to time of a named office or position in a body corporate or other body or organisation;
- "information" means the informing of the representative body or the employees' representatives (or both), by the competent organ of the SCE on questions which concern the SCE itself and any of its subsidiaries or establishments situated in another Member State or which exceed the powers of the decision making organs in a single Member State at a time, in a manner and with a content which 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;
- "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;
- "Member State" means a Member State of the Community;
- "Minister" means the Minister for Enterprise, Trade and Employment;
- "participation" means the influence of the representative body or the employees' representatives (or both) in the affairs of a legal entity by the way of—

NATIONAL IMPLEMENTATION REPORT – IRELAND

- a) the right to elect or appoint some of the members of the legal entity's supervisory or administrative organ, or
  - b) the right to recommend or oppose (or both) the appointment of some or all of the members of the legal entity's supervisory or administrative organ;
- "participating legal entities" means the companies and firms within the meaning of the second paragraph of Article 48 of the Treaty, including 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;
  - "representative body" means the body representative of the employees referred to in Regulation 13(1)(b) or Schedule 1, as the case may be, set up for the purpose of informing and consulting the employees of an SCE and its subsidiaries and establishments situated in the Community and, where applicable, of exercising participation rights in relation to the SCE;
  - "SCE" means any cooperative society established in accordance with regulations made under section 3 of the European Communities Act 1972 (No. 27 of 1972) for the purpose of giving full effect to the EC Regulation;
  - "special negotiating body" means the body established in accordance with Regulation 5 to negotiate with the competent organ of the participating legal entities regarding the establishment of arrangements for the involvement of employees within the SCE;
  - "Standard Rules" means the rules set out in Schedule 1;
  - "subsidiary", in relation to a participating legal entity or an SCE, means an undertaking over which that legal entity or SCE can exercise a dominant influence and section 5 of the Transnational Information and Consultation of Employees Act 1996 (No. 20 of 1996) shall apply for the purposes of determining whether that legal entity or SCE can exercise such influence;
  - "trade union" means a trade union which holds a negotiation licence under Part II of the Trade Union Act 1941 (No. 22 of 1941), as amended;
  - "wages" has the meaning assigned to it by the Payment of Wages Act 1991 (No. 25 of 1991);

A word or expression used in these Regulations that is also used in the Directive has the same meaning in these Regulations as it has in the Directive.

### **3.3 Creation of Special Negotiation Body (SNB) (Art. 3)**

Section 4.1 Where the competent organs of the in the legal entities shall draw up a plan for the establishment of an SCE they shall as soon as possible take the necessary steps to start negotiations with the representatives of the legal entities' employees on arrangements for the involvement of employees in the SCE.

## NATIONAL IMPLEMENTATION REPORT – IRELAND

The Irish legislation transpose the steps to start negotiations, similar to the European Directive, and states that the steps shall include the provision of information about the identity of the participating legal entities and subsidiaries or establishments, the number of employees in each identified according to the country in which they are located, and the number of such employees covered by a participation system.

The information referred to above to be supplied to the employees' representatives in the participating legal entities and subsidiaries or establishments, or where there are no such representatives, to the employees themselves.

**Creation of special negotiating body** is transposed through sections 5-6 of S.I. 259 of 2007, and sets out the criteria and rules governing the creation of the special negotiation body and its membership. Irish SNB members are elected or appointed by the employees of the participating companies (Section 5). Where there is an election, Irish law states that it is the responsibility of the management of the participating companies ("competent organs") to "arrange for the conducting of the elections.

A special negotiating body representative of the employees of the participating legal entities and concerned subsidiaries or establishments shall be created in accordance with the provisions of this Regulation.

The competent organs of the participating legal entities, and concerned subsidiaries or establishments shall make arrangements for the establishment of the special negotiating body in accordance with this Regulation.

The membership of the special negotiating body to be elected or appointed in accordance with—

- a) in the case of members to be elected or appointed to represent employees in the State, the procedure specified in Regulations 6 and 7, and
- b) in the case of members to be elected or appointed to represent employees in any other Member State, the procedures specified in laws or measures adopted by that State.

**Note:** The Irish law is vague as to how this should come about, stipulating that "appointed" is defined in the Irish law as meaning in the absence of an election, appointed by the employees and the basis on which that appointment is made may, if the employees so determine, be such as is agreed by them with the participating legal entities, their subsidiaries or establishments, the SCE, or subsidiaries or establishments of the SCE, as the case may be.

The criteria for the distribution of seats on the special negotiation body to workers and stipulates that seats on the special negotiating body shall be distributed in proportion to the number of workers employed by the participating legal entities and the concerned subsidiaries and establishments in each Member State by allocating in respect of a relevant Member State one seat per portion of employees employed in that Member State which equals 10%, or a fraction thereof, of the number of employees employed in all relevant Member States taken together. further additional members from each Member State as may be necessary in order to ensure that the special negotiating body includes at least one

NATIONAL IMPLEMENTATION REPORT – IRELAND

member representing each participating cooperative which is registered and has employees in that Member State and which it is proposed will cease to exist as a separate legal entity following the registration of the SCE.

In the case of an SCE established by way of merger, there shall be such further additional members from each Member State as may be necessary in order to ensure that the special negotiating body includes at least one member representing each participating cooperative which is registered and has employees in that Member State and which it is proposed will cease to exist as a separate legal entity following the registration of the SCE.

The rules for the election or appointment of additional members shall not entail double representation of the employees concerned. The number of additional members referred to above shall not exceed 20% of the number of members elected or appointed, referred to above.

Pursuant to the above if the number of such cooperatives is higher than the number of additional seats available, these additional seats shall be allocated to cooperatives in different Member States by decreasing order of the number of employees they employ further additional members from each Member State as may be necessary in order to ensure that the special negotiating body includes at least one member representing each participating cooperative which is registered and has employees in that Member State and which it is proposed will cease to exist as a separate legal entity following the registration of the SCE.

***Conduct of election and constitution of special negotiating body*** is set out in Section 5 of S.I. 259 of 2007.

Irish law provides that where there are election, candidates must be nominated either by a trade union or an ‘*excepted body*’ which the employer already recognises (negotiates with) or at least two employees.

S.I. 259 of 2007 defines an ‘*excepted body*’ as “having the meaning assigned to it by section 6 (3) of the Trade Union Act 1941 (No. 22 of 1941), as amended which is defined as an organization, whose members are all employed by the same employer, which negotiates on their behalf but does not have trade union status). To stand as a candidate, an employee must have been employed for at least a year, trade union officials of ‘*exempted bodies*’ may also stand. Section 6 specifies the rules governing the special negotiation body elections.

Where elections to a special negotiating body fall to be conducted, being elections by employees of participating legal entities and concerned subsidiaries or establishments in the State, they shall be conducted in accordance with the provisions of this Regulation. The competent organs of the participating legal entities, concerned subsidiaries and establishments shall arrange for the conduct of those elections.

Section 6.3 stipulates that where the number of seats on the special negotiating body allocated to the State is equal to the number of participating legal entities which have employees in the State, there shall be at least one seat for each of the participating legal entities, and each member elected or appointed to fill such a seat shall be considered as representing the employees of the participating legal entity that elected or appointed them.

NATIONAL IMPLEMENTATION REPORT – IRELAND

Section 6.4. states where the number of seats on the special negotiating body allocated to the State is greater than the number of participating legal entities which have employees in the State, there shall be one seat for each of the participating legal entities, and additional seats shall be allocated to participating legal entities by decreasing order of the number of employees they employ and each member elected or appointed to fill a seat in accordance with this paragraph shall be taken to represent those employees of the legal entities that elected them.

Section 6.5. stipulates that where the number of seats on the special negotiating body allocated to the State is less than the number of participating legal entities, the number of members equal to the number of available seats shall be elected or appointed according to the greatest number of votes won, and the representatives so elected or appointed shall between them represent the employees of the participating legal entities in the State.

Section 6.6 refers to “participating legal entity” and states that it shall be construed as including the concerned subsidiaries or establishments of such a legal entity and where the presence of a participating legal entity in the State is only by virtue of the presence of its concerned subsidiaries or establishments then those entities shall be considered for the purposes of those paragraphs as if they were that participating legal entity.

Section 6.7 stipulates that employees in undertakings or establishments in which there are no employees’ representatives shall not, by virtue of that fact alone, be prevented from exercising their right to elect or appoint members of the special negotiating body.

Section 6.8 an employee who is employed in the State by the participating legal entities, concerned subsidiaries or establishments on the day the date or dates for the election of members of the special negotiating body conducted in accordance with this Regulation and Regulation 7 is fixed and who is, on the election day or days, an employee of such a legal entity, subsidiary or establishment shall be entitled to vote in the election.

Section 6.9 stipulates that each of the following is eligible to stand as a candidate in the election of members of the special negotiating body conducted in accordance with this Regulation and Regulation 7, namely—

- a) an employee who has been employed in the State by the participating legal entities, concerned subsidiaries or establishments for a continuous period of not less than one year on the nomination day,
- b) a trade union official, whether or not he or she is an employee, and
- c) an official of an excepted body, whether or not he or she is an employee, provided that, in each case, he or she is nominated as such a candidate by—
  - (i) a trade union or an excepted body which is already recognised by the relevant participating legal entities, concerned subsidiaries or establishments located in the State for collective bargaining or information and consultation purposes, **or**
  - (ii) at least two employees.

## NATIONAL IMPLEMENTATION REPORT – IRELAND

Section 7 specifies the role of the Returning Officer appointed to oversee the election process and whose duties include; the organisation and conduct of nominations and the election and any person so appointed may authorise other persons to assist in the performance of the duties of returning. The election shall be based on secret ballot (7.2).

**Election costs:** Section 7.9 stipulates that all reasonable costs of the nomination and election procedure in the Irish election shall be borne by the competent organs of the participating legal entities.

**In the event of a vacancy arising**, following elections, Section 7.10 specifies that where, for any reason, a vacancy arises amongst those of the members of the special negotiating body who have been elected in accordance with Regulation 6 and this Regulation, arrangements shall be made by the competent organs of the participating legal entities, concerned subsidiaries and establishments and the special negotiating body for that vacancy to be filled.

**Where an employee, recently elected, ceases to be employed** by the participating legal entities, Section 7.11 stipulates that where a member of the special negotiating body whose nomination for election was on the basis of his or her satisfying the requirement contained in Regulation 6 (9)(a) ceases to be employed by the participating legal entities, concerned subsidiaries or establishments, that person shall cease to be a member of the special negotiating body.

Similarly, where an elected person, was a full time trade union official and ceased to be a full time union official, Section 7. 12 stipulates that where a member of the special negotiating body whose nomination for election was on the basis of his or her satisfying the requirement contained in Regulation 6 (9)(b) or (c), ceases to be an official of the trade union or excepted body concerned, that person shall cease to be a member of the special negotiating body.

Section 7.13 stipulates the promotion of gender balance where possible in the nomination and appointment of employee representatives. Section 7.13 states that methods used to nominate, appoint or elect employee representatives or to fill any vacancy arising in the membership of the special negotiating body, should where possible promote gender balance.

**Remit of the Special Negotiation Body** is defined by Section 8 of S.I. 259 of 2007, and specifies that the special negotiating body and the competent organs of the participating legal entities shall negotiate and determine, by written agreement, arrangements for the involvement of employees within the SCE.

Section 8.2 states that with a view to the conclusion of that agreement, the competent organs of the participating legal entities shall—

- a) convene a meeting with the special negotiating body and shall inform local managements accordingly, and
- b) inform the special negotiating body of the plan, the expected timetable, and the actual process of establishing the SCE, up to its registration.

Section 8.3 stipulates that the agreement referred to in paragraph (1) shall be binding on the entire group of legal entities within the SCE, irrespective of the Member State in which it was signed and the location of those legal entities.

NATIONAL IMPLEMENTATION REPORT – IRELAND

***Voting procedure in the special negotiating body*** is defined by Section 9 as follows:

9. (1) Subject to paragraph (2) and Regulation 11, the special negotiating body shall take its decisions (including the final decision whether to approve the entering into of an agreement under Regulation 8) by an absolute majority of its members, with each member having one vote, provided that such a majority also represents an absolute majority of the employees.

(2) In each of the following cases, if the result of negotiations would lead to a reduction of participation rights, the majority required for a decision to approve the entering into of an agreement under Regulation 8 shall be the votes of two thirds of the members of the special negotiating body representing at least two thirds of the total number of employees, including the votes of members representing employees employed in at least two Member States.

(3) The cases mentioned in paragraph (2) are—

- a) the case of an SCE to be established by way of a merger, if participation covers at least 25% of the overall number of employees of the participating cooperatives,
- b) 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.

(4) In paragraph (2) “reduction in participation rights” means a proportion of members of the organs of the SCE within the meaning of “participation”, as defined in Regulation 2, which is lower than the highest proportion existing within the participating legal entities.

(5) Any decision made under paragraph (2) shall be brought to the attention of the employees by the special negotiating body as soon as reasonably practicable and in any event no later than 14 days after the decision has been made.

***Engagement of experts by special negotiating body*** is defined under Section 10, as follows:

For the purpose of the negotiations, the special negotiating body may engage experts of its choice to assist with its work. The experts may be representatives of appropriate Community level trade union organisations.

The experts may be present at negotiation meetings in an advisory capacity at the request of the special negotiating body, where appropriate to promote coherence and consistency at Community level.

The special negotiating body may decide to inform the representatives of appropriate external organisations, including trade unions and excepted bodies, of the start of the negotiations

**Note:** The Irish legislation refers to the funding of experts and not to the funding of a single expert, which is contained in the Directive. The Irish legislation simply states that the SNM may ‘engage experts of its choice to assist with its work’ (Section 10) and the ‘reasonable expenses relating to the functioning of the SNB ‘shall be borne by the participating companies (Section 12). This is different from the Directive.

NATIONAL IMPLEMENTATION REPORT – IRELAND

*Termination of process by special negotiating body* is regulated by Section 11, which stipulates that the special negotiating body may decide, by the majority specified in paragraph (3), not to open negotiations with the competent organs of the participating legal entities or to terminate negotiations already opened, and to rely on the rules on information and consultation of employees in force in each of the Member States (including the State) where the SCE has its employees.

Section 11.2 stipulates that a decision taken under paragraph (1) shall terminate the procedure referred to in Regulation 13 for the conclusion of an agreement, and the provisions of Schedule 1 shall not apply.

Section 11.3 stipulates that the majority required for the purposes of paragraph (1) shall be the votes of two thirds of the members representing at least two thirds of the employees, including the votes of members representing employees employed in at least two Member States.

Section 11 (4) stipulates that this Regulation shall not apply in the case of an SCE to be established by way of transformation where there is participation in the cooperative to be transformed.

Section 11.5 stipulates that subsequent to a decision taken under paragraph (1), the special negotiating body shall reconvene on the written request of at least 10% of the employees of the SCE, its subsidiaries and establishments, or the representatives of that percentage of employees.

Section 11.6 requires that the special negotiating body shall only be reconvened in accordance with paragraph (5) where at least 2 years have elapsed since the taking of a decision under paragraph (1), unless the parties agree to reopen negotiations sooner.

Section 11.7 stipulates that where the special negotiating body decides to reopen negotiations with the management but no agreement is reached as a result of those negotiations, none of the provisions of Schedule 1 shall apply.

*Expenses* is governed by Section 12, which states that the reasonable expenses relating to the functioning of the special negotiating body and, in general, to negotiations under these Regulations shall be borne by the participating legal entities so as to enable the special negotiating body to carry out its functions in an appropriate manner.

**Note:** The company is obliged to cover the reasonable costs of the representative body to enable its members to perform their duties in an appropriate manner. There is no specific reference to the costs of experts in the Irish law, but Schedule 1 Part 2 Article 15 stipulates that the representative body or the select committee may be assisted by experts of its choice.

Article 15.2 specifically states that the reasonable costs of the representative body shall be borne by the SCE which shall provide the body's members with the financial and material resources needed to enable them to perform their duties in an appropriate manner.

NATIONAL IMPLEMENTATION REPORT – IRELAND

### 3.4 Content of agreement (Art. 4)

The content of the agreement is transposed by Section 13 of S.I. 259 of 2007 and is the same as that specified in the Directive. The Irish law states without prejudice to the autonomy of the parties, and subject to paragraph (4), the agreement shall specify:

- a) the scope of the agreement;
- b) the composition, number of members and allocation of seats on the representative body which will be the discussion partner of the competent organ of the SCE in connection with arrangements for the information and consultation of the employees of the SCE and its subsidiaries and establishments;
- c) the functions and procedure for the information and consultation of the representative body;
- d) the frequency of meetings of the representative body;
- e) the financial and material resources to be allocated by the SCE to the representative body;
- f) if, during negotiations, the parties decide to establish one or more information and consultation procedures instead of a representative body, the arrangements for implementing those procedures;
- g) if, during the negotiations, the parties decide to establish arrangements for participation, the substance of those arrangements including, where applicable, the number of members in the SCE's administrative or supervisory body which the employees will be entitled to elect, appoint, recommend or oppose, the procedures as to how these members may be elected, appointed, recommended or opposed by the employees, and their rights; and
- h) the date of entry into force of the agreement, its duration, the circumstances requiring renegotiation of the agreement and the procedure for its renegotiation including, where appropriate, in the event of structural changes in the SCE and its subsidiaries and establishments which occur after the creation of the SCE.

Section 13.2. stipulates that unless it otherwise provides, the agreement shall not be subject to the Standard Rules.

Section 13.3 states without prejudice to Regulation 24 (4)(a), 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 employee involvement as the ones existing within the cooperative to be transformed into an SCE.

Section 13.4 stipulates that the agreement shall be signed on behalf of the competent organs of the participating legal entities and by the members of the special negotiating body and included in the minutes of the meeting at which it was agreed.

## NATIONAL IMPLEMENTATION REPORT – IRELAND

Section 13.5 stipulates that once the agreement is signed, the special negotiating body shall take the necessary steps for it, or its contents, to be communicated to the employees of the SCE.

### **3.5 Duration of negotiation (Art. 5)**

Article 5 is transposed to Irish law in Section 14 of S.I. 259 of 2007, as follows:

Section 14 requires the competent organs of the participating legal entities and the special negotiating body shall commence negotiations as soon as the special negotiating body is established and those negotiations may continue for up to 6 months from the establishment of that body.

Section 14.2 stipulates that the parties may decide, by joint agreement, to extend negotiations beyond the period referred to in paragraph (1) up to a total of one year from the establishment of the special negotiating body.

### **3.6 Standard rules (Article 7 plus Annex)**

Sections 16 -18 of S.I. 259 transpose Article 7 and the Annex to Irish law, as follows:

- Section 16 states that employee participation in an SCE shall be governed by the provisions of Part 3 of S.I. 259 of 2007.

In the case of an SCE established by transformation, if the rules of a Member State relating to employee participation in the administrative or supervisory body applied before registration, all aspects of employee participation shall continue to apply to the SCE, and subparagraph (2) shall apply, with the necessary modifications, to that end.

- Section 17.2 states that in establishing an SCE, other than by transformation as referred to in subparagraph (1), the employees of the SCE, its subsidiaries and establishments and their representative body (or both) 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 registration of the SCE.
- Section 17.3 states that if none of the participating legal entities was governed by participation rules before registration of the SCE, the SCE shall not be required to establish provisions for employee participation.
- Section 17.4 states that 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 or on 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.
- Section 17.5 stipulates that if, as a consequence of a decision under subparagraph (4), the employees of one or more Member States are not covered by the proportional criterion, the representative body shall, where possible, appoint a member from one of those

## NATIONAL IMPLEMENTATION REPORT – IRELAND

Member States, in particular the Member State of the SCE's registered office where that is appropriate.

- Section 17.6 states that for the purposes of subparagraph (5) and the determination of the allocation of the seats given within the administrative or supervisory body to employees in the State, those members of the representative body representing employees in the State shall select, from amongst their number, a number of representatives equal to the number of seats available.
- Section 18 stipulates every member of the administrative body or, where appropriate, the supervisory body of the SCE who has been elected, appointed or recommended by the representative body or, depending on the circumstances, by the employees 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.

### **Transposition of the Annex Standard Rules**

The transposition of the Annex Standard Rules referred to in Articles 7 and 8 of the Directive, is achieved by an Annex in the Irish legislation.

It should be noted the Irish legislation does not specifically define the SCE representative body members from Ireland. Overall they are to be chosen by employee representatives, or if there are none, by the employees themselves, and the mechanism for doing so is decided on by the SNB.

The Irish legislation does not define the rules setting out how Irish members of the representative body should be chosen, under the fallback procedure. The regulations deal only with the overall composition of the representative body, stating that it should be made up of employees of the SE – in contrast to the SNB, external trade union or other officials cannot be members – and that it should be elected or appointed by the employee representatives or, in the absence thereof, by the entire body of employees. The way that the members of the representative body are to be elected or appointed is to be 'agreed by the special negotiating body'.

### **3.7 Natural persons (Art. 8)**

Section 16 defines the Rules applicable to SCEs established exclusively by Natural Persons or by a Single Legal Entity and Natural Persons.

This Regulation applies to an SCE established exclusively by natural persons or by a single legal entity and natural persons, as follows:

(2) Where the SCE employs no less than 50 employees in no less than 2 Member States then Regulations 4 to 15 and Schedule 1 apply to the SCE.

(3) Where the SCE employs less than 50 employees or employs no less than 50 employees in one Member State the following applies as respects employee involvement:

- a) in relation to the SCE, the laws of the Member State where it has its registered office,

**NATIONAL IMPLEMENTATION REPORT – IRELAND**

- b) in relation to the subsidiaries and establishments of the SCE, the laws of the Member States that apply to SCEs where the subsidiaries and establishments are situated.

(4) The transfer of the registered office of an SCE which is governed by participation from one Member State to another shall not result in the loss of any employee participation rights.

(5) Where, following the registration of an SCE referred to in paragraph (3), either of the following occurs namely—

- a) at least one third of the employees of the SCE and its subsidiaries and establishments in 2 different Member States requests it, or
- b) the number of employees employed by the SCE reaches 50 or more in no less than 2 Member States, then Regulations 4 to 15 and Schedule 1 shall apply to that SCE and shall be read in relation to that SCE as if “participating legal entities” were “SCEs” and “concerned subsidiaries or establishments” were “subsidiaries or establishments of the SCE” and with all other necessary modifications.

#### **4. Participation in the general meeting or section or sectoral meeting – Article 9**

The Irish Statutory Instrument does not implement the rules referred to in article 9 of the Directive in respect to participation in the general or sectoral meeting.

#### **5. Confidential information (art. 10)**

Section 19 defines the rules governing **confidential information** which applies to an individual who is or at any time was:

- a) an employee,
- b) a member of:
  - (i) the special negotiating body, or
  - (ii) the representative body,
- c) an employees’ representative in an information and consultation procedure,

or

- d) an expert providing assistance,

shall not reveal any information which, in the legitimate interest of the relevant undertakings or the SCE, has been expressly provided in confidence to him or her or to the body by the relevant undertakings or the SCE.

The duty of confidentiality imposed by paragraph (1) shall continue to apply after the cessation of the employment of the individual concerned or the expiry of his or her term of

## NATIONAL IMPLEMENTATION REPORT – IRELAND

office. A relevant undertaking and the SCE may refuse to communicate information to a special negotiating body, a representative body or employees or their representatives (or both) in an information and consultation procedure where the nature of that information is such that, by reference to objective criteria, it would:

- a) seriously harm the functioning of one or more than one relevant undertaking or the SCE, or
- b) be prejudicial to one or more than one relevant undertaking or the SCE.

(4) The Court or any member of the Court or the registrar or any officer or servant of the Court, including any person or persons appointed by the Court as an expert or mediator, shall not disclose any information obtained by it in confidence in the course of any proceedings before it under these Regulations.

### **6. Spirit of co-operation (art. 11)**

The **spirit of co-operation** is covered in Section 17, which stipulates that the parties shall negotiate or work together, as the case may be, in a spirit of cooperation with due regard for their reciprocal rights and obligations, and taking into account the interests both of the SCE and of the employees. “The parties” is defined as meaning:

- a) the competent organs of the participating legal entities and the special negotiating body, in relation to reaching an agreement in accordance with Regulation 8 on arrangements for the involvement of the employees within the SCE;
- b) the competent organ of the SCE and the representative body; and
- c) the supervisory or administrative organ of the SCE and the employees or their representatives (or both), with regard to a procedure for the information and consultation of employees.

### **7. Jurisdiction/compliance (Articles 13 and 14)**

Section 21(1) states that disputes between one or more than one relevant undertaking or the SCE and employees or their representatives relating to the special negotiating body of an agreement should have recourse to the internal dispute resolution procedure (if any) in place in the relevant undertaking or SCE concerned has failed to resolve the dispute, and (b) the dispute has been referred to the Labour Relations Commission which, having made available such of its services as are appropriate for the purpose of resolving the dispute, furnishes a certificate to the Labour Court stating that the Labour Relations Commission is satisfied that no further efforts on its part will advance the resolution of the dispute.

Having investigated a dispute the Labour Court may make a recommendation in writing giving its opinion in the matter. Where, in the opinion of the Labour Court, a dispute that is the subject of a recommendation has not been resolved, the Labour Court may, at the request of:

- a) one or more than one relevant undertaking or the SCE, or

## NATIONAL IMPLEMENTATION REPORT – IRELAND

b) one or more employees or their representatives (or both),

and, following a review of all relevant matters, make a determination in writing. A party to a dispute under this Regulation may appeal from a determination of the Court to the High Court on a point of law and the decision of the High Court shall be final and conclusive. The Court may refer a question of law arising in proceedings before it under this Regulation to the High Court for determination and the decision of the High Court shall be final and conclusive.

### **8. Case law**

The Directive was transposed to Irish law in July 2007. There is no Irish case law to-date arising from the transposition and implementation of this Directive.

### **9. Practical implementation**

There is difficulty when trying to estimate the number of co-operatives. This is because a co-operative can choose not to register. There is great variety in the size and structure of Irish co-operatives, with many employing less than 10 employees, while others operate on a scale of multinationals. Ireland's national-level social partnership agreements involving a combination of consultation and negotiation among employer organisations, farmer representatives, trade unions, the government, and a community and social pillar, has been generally viewed as contributing to the Ireland's recent economic success. Because the cooperative sector is fragmented and highly differentiated, it is unlikely the transposition of Directive 2002/73/EU to Irish law will have any significant impact or practical implementation on Irish industrial relations.

It is argued that in Ireland, depending on local conditions, the legal configuration of cooperatives can differ; they may operate as a single cooperative or as a dual legal entity. In the latter case, the assets and operations have been allocated into a limited company that is fully owned and controlled by the cooperative. In a number of cases, cooperatives have entered into a process of hybridisation. They have attracted external risk bearing capital besides the members' equity and/or they have partly gone public, mostly but not always restricted to a minority stake. Also in the case of a minority stake, this means the loss of the company's cooperative identity and the adoption of profit-orientation as their business objective. The company's objectives, strategies and business methods cannot be half cooperative-half profit-oriented, as external investors demand a 100% profit orientation.

There is also a strong trend toward conversion of agricultural cooperatives to public companies in some other parts of the world. Three major Irish dairy cooperatives led the way about 10 years ago. The Kerry Group is often held up as a model of the benefits of corporatisation. Since its public listing in 1986, Kerry Group has grown into a major international food business with interests extending into areas such as meat products, convenience foods, home baking products and food ingredients. As in the case of Wesfarmers, a cooperative structure initially held a majority shareholding in Kerry Group but with the rapid expansion of the company the proportion of shares owned by the farmer cooperative has fallen substantially. The success of Kerry Group's operations has led to around a 20-fold appreciation in the company's share price.

## NATIONAL IMPLEMENTATION REPORT – IRELAND

It would not be correct to imply that the advantages of the corporate form are seeing an inexorable trend toward conversion of agricultural cooperatives to public companies. There is the potential for conflict between public shareholders and cooperative members when cooperatives attempt to maintain the business practices of a cooperative while raising equity capital from the public. Some agricultural cooperatives that have experimented with public listing, including a subsidiary of the large US dairy cooperative Land O'Lakes, have subsequently reverted to 100 percent ownership by a cooperative.

## 10. Conclusions

The Irish experience in transposing this Directive is similar to most the European member states, where in the great majority of cases, member states have chosen the legislative route to implement the employee involvement Directive, rather than seeking to do so through a collective agreement.

The position in Ireland concerning the transposition process has been marked by the lack of interest in the issue. There was no public debate on the matter. The social partners did not engage in a lengthy debate and the legal enactment slipped quietly on to the Irish statute book.

The Directive was transposed to Irish legislation in May 2007. The transposition process has followed the contents of the Directive very closely, with only some variations.

*Engagement of experts:* The Directive limits the funding of experts to a single expert. The Irish legislation on funding does not limit funding to a single expert. It simply refers to the SNB to “engage experts of their choice to assist with its work... and the reasonable expenses relating to the functioning of the SNB shall be borne by the participating companies”(Section 12).

*Elected or Appointed:* The Irish SNB members are elected or appointed. If the appointment process is used, the law is unclear as to how this will happen. There are no processes outlined for this. For example, a criteria that could have been deployed is ‘representativeness’ , which is used in other jurisdictions. However, the absence of such criteria may be a cause of conflict.

*SNBs and Full Time Union Officials:* Full time trade union officials (external to the organisation) can be appointed in the SNB under Irish law. This is a departure from existing Irish industrial relations practices and procedures, where full time trade union officials have not been included in previous worker participation legislation.

*SE Committee and seat allocation:* The Irish legislation does not specify how Irish members of the SE representative body should be chosen under the fall back procedure. The regulations only specify the overall composition of the representative body.

It is worth noting that full time trade union officials cannot be members of the SE representative body – only the SNB. The way the members of the representative body can be elected or appointed is to be “agreed by the SNB”.

NATIONAL IMPLEMENTATION REPORT – IRELAND

*Dispute resolution:* In the event of issues arising pertaining to the misuse of procedures, Irish law requires the matter to be dealt with informally in the first instance at company level. This may not be possible if there are no proper procedures in place. Following the informal process, matters can be referred to the Labour Relations Commission and the Labour Court for a determination. The issue can be referred to the High Court on a point of law. This *new* area of work for the Labour Relations Commission and Labour Court may add considerably to the workload of these bodies. The issues have the potential of being quite complex and may eventually find their way to the High Court.

NATIONAL IMPLEMENTATION REPORT – IRELAND

## Annex: Correspondence table

| Content  | Articles in the Directive 2003/72/EC | Ireland Statutory Instrument 259 of 2007 |
|--|--------------------------------------|--|
|  | Article                              | Section                                  |
| General  | 1                                    | Preamble                                 |
|  | 1.2                                  | 3  |
| Definitions  | 2                                    | 2(1)                                     |
| Creation of Special Negotiating Body   | 3(1)                                 | 4(1)                                     |
|  | 3(2)                                 | 5(1)                                     |
|  | 3(2)(a)(i)                           | 5(4)                                     |
|  | 3(2)(a)ii)                           | 5(5)- 5(8)                               |
|  | 3(2)(b)                              | 5 (7)                                    |
|  | 3(3)                                 | 8(1); 8(2)(a)(b)                         |
|  | 3(4)                                 | 9(1)-9(4)                                |
|  | 3(5).                                | 10(1) – 10(4)                            |
|  | 3(6)                                 | 11(1)- 11(7)                             |
|  | 3(7)                                 | 12                                       |
| Content of Agreement   | 4(1)                                 | 17(1)                                    |
|  | 4(2)(a)                              | 13((1)(a)                                |
|  | 4(2)(b)                              | 13((1)(b)                                |
|  | 4(2)(c)                              | 13(1)(c)                                 |
|  | 4(2)(d)                              | 13(1)(d)                                 |
|  | 4(2)(e)                              | 13(1)(c)                                 |
|  | 4(2)(f)                              | 13(1)(f)                                 |
|  | 4(2)(g)                              | 13(1)(g)                                 |
|  | 4(2)(h)                              | 13(1)(h)                                 |
|  | 4(3)                                 | 13(2)                                    |
|  | 4(4)                                 | 13(3)                                    |
|  | 4(5)                                 | Not transposed                           |
| Duration of negotiations   | 5(1)                                 | 14(1)                                    |
|  | 5(2)                                 | 14(2)                                    |
| Legislation applicable to the negotiation procedure  | 6                                    | 16(3)(a)(b)                              |
| Standard Rules   | 7(1)                                 | 15(1)                                    |
|  | 7(1)(a)                              | 15(1)(a)                                 |
|  | 7(1)(b)                              | 15(1)(b)(i)                              |
|  | 7(2)                                 | 15(2)                                    |
|  | 7(2)(a)                              | 15(2)(b)                                 |
|  | 7(2)(c)                              | 15(2)(c),15(3)                           |
| Section 111: Rules Applicable to SCEs Established exclusively by natural persons or by a single legal entity and natural persons | 8(1)                                 | 16(1)                                    |

NATIONAL IMPLEMENTATION REPORT – IRELAND

| Content  | Articles in the Directive 2003/72/EC | Ireland Statutory Instrument 259 of 2007                  |
|--|--------------------------------------|---|
|  | 8(2)                                 | 16(2), 16(4)  |
|  | 8(3)                                 | 16(5)(a)(b)   |
| Section 1V: Participation in General meeting or section or sectorial meeting                         | 9                                    | Not transposed  |
|  |                                      |   |
| Section V: Miscellaneous Provisions  | 10(1)                                | Part 3 Miscellaneous Provisions<br>19(1) and (2)          |
|  | 10(2)                                | 19(3)(a)(b); 19(4)  |
|  | 10(3)                                | Not transposed  |
| Operation of the representative body and procedure for the information and consultation of employees | 11                                   | 17(1)(2)(a-c)   |
| Protection of Employees' Representatives   | 12                                   | 20(1)(a-d); 20(2)(a-b)<br>20(3) 20(7)                     |
| Misuse of Procedures   | 13                                   | 21(1)(f)  |
| Compliance with Directive  | 14(1)                                | 20  |
|  | 14(2)                                | 21(2)(a-b)<br>21(3); 21(4) 21(9)(10);<br>22(1-6); 23(1-4) |
| Link between this Directive and other provisions   | 15(1)                                | 23(2)   |
|  | 15(2)                                | 24(1)   |
|  | 15(3)(A)                             | 24(4)   |
|  | 15(3)(B)                             | 24(3)   |
|  | 15(4)                                | Not transposed  |
| Final provisions   | 16(1)                                | Transposed July 07  |
|  | 16(2)                                | S.I.259 of 2007   |
| Review by the Commission   | 17                                   | Not transposed  |
| Entry into force   | 18                                   | July 2007.  |
|  |                                      |   |

## Bibliography

- Bell, Susan, 204 Amendments to Merger Directive: A New Dawn for Cross-Border Reorganizations? DFI, May/June 2004
- Briscoe, R. and Ward, M. (2000), The Competitive Advantages of Co-operatives, Centre for Co-operative Studies NUI Cork: Litho Press.
- Calvo, J et al. 2008 Employee Representatives in an Enlarged Europe, European Commission Directorate General for Employment.
- Central Statistics Office (2006), Population Statistics. Available at: <http://www.cso.ie/statistics/Population1901-2006.htm>
- Co-operatives Europe, Statistics. Available at: [www.coopseurope.coop](http://www.coopseurope.coop) and [www.coopseurope.coop/rubrique.php3?id\\_rubrique=21](http://www.coopseurope.coop/rubrique.php3?id_rubrique=21)
- Department of Enterprise Trade and Employment 2008 Co-Operative Societies; Consultation Paper on the Industrial and Provident Societies Acts 1893-2005.
- ETUI 2009 Benchmarking Working in Europe 2009, [www.etui.org](http://www.etui.org)
- European Foundation for the Improvement of Living and Working Conditions Consultation Directive on Industrial Relations 2008, Dublin.
- Forfas Report 2007 Ireland's Co-Operative Sector, Dublin [www.forfas.ie](http://www.forfas.ie)
- Fulton, F 2008 Anchoring the European Company in National Law - [www.worker-participation.eu](http://www.worker-participation.eu)
- Kluge, N and Stollt, M 2006 The European Company – Prospects for Worker Board Level Participation in the Enlarged, ETUI-REHS.