



Implementation Report for Romania

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

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ENVIRONMENTAL LAW & POLICY

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**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**

TABLE OF CONTENTS

EXECUTIVE SUMMARY	5
KEY POINTS	9
ABBREVIATIONS USED	11
1 INTRODUCTION	12
1.1 The situation before transposition in Romania.....	12
1.2 Procedures for incorporating Directive 2003/72/EC.....	13
1.3 Stakeholder involvement in transposition.....	14
2 LEGAL ANALYSIS OF THE TRANSPOSING MEASURES FOR DIRECTIVE 2003/72/EC AND THEIR PRACTICAL IMPLEMENTATION	14
2.1 Objective and Definitions (Articles 1 and 2)	14
2.1.1 Scope (Article 1)	14
2.1.2 Definitions (Article 2).....	14
2.2 The creation of a special negotiating body (Article 3).....	15
2.3 The content of the agreements (Article 4)	16
2.4 Rules on negotiations (Articles 5, 6 and 7 and Annex).....	16
2.4.1 Procedural rules (Articles 5 and 6)	16
2.4.2 Standard rules (Article 7 and Annex).....	16
2.5 SCEs established exclusively by natural persons and participation in general meetings (Articles 8 and 9)	17
2.5.1 SCEs established exclusively by natural persons (Article 8)	17
With respect to the rules applicable to SCEs established exclusively by natural persons or by a single legal entity and natural persons 2 cases of incorrect transposition were identified. Although both provisions were (almost) literally transposed, both provisions did not include correct cross-references.....	17
2.5.1 Participation in meetings (Article 9).....	17
2.6 Confidential information, spirit of co-operation and protection (Articles 10, 11 and 12) ...	18
2.7 Jurisdiction and compliance (Articles 13, 14 and 15)	18
2.8 Standard rules (Annex).....	19
3 AFTER THE IMPLEMENTATION OF DIRECTIVE 2003/72/EC: PROGRESS OR REGRESSION?	20
3.1 The situation after transposition in Romania	20
3.2 Stakeholder views on implementation	21
4 CONCLUSION	21
BIBLIOGRAPHY	22
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

Before the transposition, Romanian labour legislation did not contain any provisions regulating the European Cooperative Society or the information, consultation and other mechanisms of involvement of employees in the affairs of European cooperative societies. Law no. 1/2005 on the organisation and functioning of the cooperative societies in force from March 3rd, 2005, was regulating only the relationships between the Romanian cooperative societies and their members and it does not contain any provisions on information, consultation and other mechanisms of involvement of employees in the affairs of such cooperative societies.

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).¹ 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.

Directive 2003/72/EC supplementing the Statute for a European Cooperative Society with regard to the involvement of employees has been transposed into the Romanian legislation through Government Decision no. 188/2007 on information, consultation and other mechanisms of involvement of employees in the affairs of European Cooperative Societies. This GD was published and entered into force on 7 March 2007. Therefore, on January 1st, 2007, the date of Romania's accession to the European Union, the transposition was not ensured. Only Article 15 (1) and (2) of the Directive were transposed through Law no. 217/2005 on setting up, organising and functioning of the European Works Council, and entered into force in 2005.

The concept of a European Cooperative Society was new to Romania. No comments or proposals were made in relation to the drafts of the legal acts on this subject. The GD 188/2007 and Law 217/2005 were not amended because their provisions on information, consultation and other mechanisms of involvement of employees in the affairs of European cooperative societies were not implemented in practice and, therefore, no implementation issues or clarification requirements were noted.

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

Generally, GD 188/2007 on information, consultation and other mechanisms of involvement of employees in the affairs of European cooperative societies ensured good transposition of Directive 2003/72/EC supplementing the Statute for a European Cooperative Society with regard to the involvement of employees.

However, a large number of non-conformity issues have been noted – the majority of which is the result of incomplete and/or incorrect cross-references. In sum, the main issues that have been identified are:

The definition of 'participating legal entities' provided by the Directive was *incompletely transposed*. According to Article 2 (b) of the Directive 'participating legal entities' means 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. In transposing this definition, the Romanian text refers to "companies",

¹ Website DG EMPL Labour Law, <http://ec.europa.eu/social/main.jsp?catId=707&langId=en&intPageId=213>.

restraining the meaning provided by the Directive which is larger as it refers to “companies and firms”, “as well as legal bodies”.

Another case of *incomplete transposition* was noted regarding Article 3.2. (b) which obliges the Member States to determine 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 in their territories. Article 4 of the GD 188/2007 provides for method to be used for the election or appointment of the members of the special negotiating body as requested by the Directive. However, in transposing this provision the Romanian legislation does not include the requirements that, as far as possible, the members shall include at least one member representing each participating legal entity which has employees in the Member State concerned and that such measures must not increase the overall number of members. It can however be argued that the requirement of using methods to nominate, appoint or elect employee representatives which promote gender balance is ensured by the non-discrimination legislation.

Transposition is incomplete with respect to Article 4. 2 (h). This article provides for the content of the agreement, 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. Article 10 (2) (h) of the GD 188/2007 does not make any reference to “the event of structural changes in the SCE and its subsidiaries and establishments which occur after the creation of the SCE”.

Another case of *incomplete transposition* relates to Article 9 of the Directive, requiring that the employees of the SCE and/or their representatives will be entitled to participate in the general meeting or, if it exists, in the section or sectorial meeting, with the right to vote, in the circumstances listed therein. In contrast to the Directive, Article 27 of the GD 188/2007 does not ensure the participation in the “section or sectorial meetings”.

Article 10.4 requiring that Member States shall make provisions for administrative or judicial appeal procedures which the employees’ representatives may initiate when the supervisory or administrative organ of an SCE or of a participating legal entity demands confidentiality or does not give information was also *incompletely transposed*. Although Article 30 of the GD 188/2007 makes reference to members of the special negotiation body or of the representative body, or the employees’ representatives, as distinct from the Directive referring only to employees’ representative, it refers only to the case when such persons consider unjustified the refusal of the supervisory or administrative organ of an SCE or of a participating legal entity to provide information due to confidentiality reason, and does not make any reference to the situation when they demand confidentiality, which is expressly mentioned by the Directive.

As mentioned above, some cases of incomplete or incorrect transposition were the result of wrong cross-reference. However, these can be considered as minor issues. It can be noted that the transposition of these provisions is mostly literal. These minor non-conformity issues were found regarding the transposition of Articles 4.2 (a), 8.1, 8.3 and 9.3 of the Directive, as well as in relation with the provisions of its Annex - items 1 (b) 1st part and 2nd part, 1 (e), 1 (g) 1st part and 2nd part.

As results from the statements of the trade unions interviewed, there is no information on the implementation of the legislation transposing the Directive. The employees are not aware of the meaning of the European Cooperative Society and, therefore, which are the cases when such legislation is applicable.

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

Before the transposition of the ECS Directive there were no legal provisions with respect to these entities and the information, consultation and other mechanisms of involvement of employees in the affairs of European cooperative societies. Consequently, the transposition of the Directive represents a

progress on this issue. However, there is a rather large number of cases of non-conformity regarding the transposition of the Directive's requirements.

It is important to note that from the statements of the stakeholders interviewed and from the expert's experience it results that the ECS Directive is not implemented in practice. There are several reasons for the lack of implementation: the stakeholders are not (yet) familiar with the concept of European Cooperative Society; there are no European Cooperative Societies in Romania; and there are no participating companies from Romania in European cooperative societies. Only some cases of participation of companies from Romania in European societies (SE) have been found.

No proposals of amending the legislation have been formulated since it has not been implemented yet.

4. Conclusions

The Directive 2003/72/EC of 22 July 2003 supplementing the Statute for a European Cooperative Society with regard to the involvement of employees has been transposed into the Romanian legislation through GD 188/2007 on information, consultation and other mechanisms of involvement of employees in the affairs of European cooperative societies. Especially Article 15 (1) and (2) of the Directive was transposed by Law no. 217/2005 on setting up, organising and functioning of the European Works Council.

Although the transposition is generally good (mainly literal), a large number of non-conformity issues were identified. Such issues should be amended to ensure full transposition.

It should be underlined that GD 188/2007 is not implemented in practice, and no proposals for amendment have been drafted.

However, it would be recommended that specific information campaigns to increase the awareness of stakeholders on the European Cooperative Society and the applicable legislation should be initiated by the public authorities.

KEY POINTS

- The European Cooperative Society is new in Romania. Before the transposition, Romanian labour legislation did not contain any provisions regulating the European Cooperative Society or the information, consultation and other mechanisms of involvement its employees.
- Law no. 1/2005 on the organisation and functioning of cooperative societies regulates only the relationships between the Romanian cooperative societies and their members. Under this law, only the members who participate in the corporate funds by performance of work on grounds of employment contracts are involved in the affairs of the cooperative society as members of the General Assembly.
- Directive 2003/72/EC has been transposed into the Romanian legislation through Government Decision no. 188/2007 on information, consultation and other mechanisms of involvement of employees in the affairs of European Cooperative Societies.
- The overall transposition of the Directive in the Romanian legal order is effective. Despite transposition being literal to a great extent, several deficiencies and omissions were identified in the transposition. These were often the result of incomplete or incorrect cross-references.
- The ECS Directive is not implemented in practice. Reasons for this lack of implementation are that the stakeholders are not familiar with the concept of European Cooperative Society; there are no European Cooperative Societies in Romania; and there are no participating companies from Romania in European cooperative societies.
- The stakeholders have not shown their interest in amending legislation in this context. They have been involved in the transposition only on the occasion of the procedures carried out within SCE. These procedures were finalised with no comments from their side.
- Specific information campaigns should be initiated by the public authorities to increase the awareness of stakeholders on the European Cooperative Society and the applicable legislation

ABBREVIATIONS USED

Art	Article
CA	Competent Authority
ECJ	European Court of Justice
ECS Directive	Directive 2003/72/EC supplementing the Statute for a European Cooperative Society with regard to the involvement of employees
GD 188/2007	Government Decision no. 188/2007 on information, consultation and other mechanisms of involvement of employees in the affairs of european cooperative societies
Law 217/2005	Law no. 217/2005 on setting up, organising and functioning of the European Works Council
LI	Labour Inspection
TLI	Territorial Labour Inspectorate
ESC	Economic and Social Council
BNS	Blocul National Sindical, a National Trade Union (Trade Union Confederation)
FSIA	Federatia Sindicatelor din Industria Alimentara (Food Industry Trade Union Federation), a Branch Trade Union (Trade Union Federation)
Cartel Alfa	National Trade Union (Trade Union Confederation)

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 Romania. 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, first, an overview will be given of the national context of transposition. Second, an analysis by Article will provide an overview of the status of transposition and the practical implementation issues (including case law) in Romania. Following, Section 3 discusses whether practical information leads to progress or regression whereas Section 4 includes some concluding remarks.

1.1 The situation before transposition in Romania

The previous Romanian Labour Code (Law no. 10/1972) and supplementary labour legislation adopted during the communist regime, as well as after 1990 did not contain any provisions regulating the European Cooperative Society or the information, consultation and other mechanisms of involvement of employees in the affairs of European cooperative societies. The concept of a European Cooperative Society was unknown.

Law no. 1/2005 on the organisation and functioning of the cooperative societies was published in the Official Journal of Romania on 28 February 2005 and entered into force on 3 March 2005. It regulates the relationships between the Romanian cooperative societies and their members only. The cooperative society is an association of individual persons set up as a distinct legal person. The members of a cooperative society may participate in such a society as follows: (i) by acquiring shares and/or transferring goods – they have patrimonial relationships with the cooperative society; (ii) by performance of work on grounds of employment contracts – they have employment relationships with the cooperative society; (iii) by performance of services as individual persons authorized to perform independent activities – they have commercial relationships with the cooperative society. All such members participate in the General Assembly of the cooperative society having the right to vote.

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>.

In addition, as there is no legal prohibition, the cooperative society may also hire employees who are or who are not members of the respective legal entity. However, although it is not expressly provided, the second employment contract should cover other activities than those covered by the employment relationship the respective individual has with the cooperative society as a member. On the other side, as there is no legal exemption, the employees of cooperative societies are treated as employees in any other companies. However, the law does not contain any specific provisions on information, consultation and other mechanisms of involvement of employees in the affairs of the cooperative societies.

1.2 Procedures for incorporating Directive 2003/72/EC

Under the Romanian Constitution, the laws are drawn up as a result of the exercise of the right to legislative initiative under the Constitution and are submitted to Parliament, which is the only legislative authority. According to the Constitution, the Parliament adopts *constitutional, organic, and ordinary* laws. The difference between organic laws and ordinary laws arises from the procedures followed by the Parliament for their adoption: organic laws shall be passed with the vote of the majority of the members of each Chamber, whilst ordinary laws shall be passed with the vote of the majority of the members present in each Chamber. Laws in the area of “the general rules covering labour relations, trade unions, employers’ associations, and social protection” represent organic laws. According to the Constitution, the law shall be published in the Official Journal of Romania and comes into force 3 days after its publication or at a subsequent date provided in its text.

Decisions may be issued by the Government to organise the execution of laws. Governmental Decisions come into effect on the date of their publication in the Official Journal of Romania, if no subsequent date is stipulated in their contents.

The Directive 2003/72/EC of 22 July 2003 supplementing the Statute for a European Cooperative Society with regard to the involvement of employees has been transposed into the Romanian legislation through Government Decision no. 188/2007 on information, consultation and other mechanisms of involvement of employees in the affairs of European cooperative societies, adopted on 20 February 2007 and published in the Official Journal of Romania on 7 March 2007 and Law no. 217/2005 on setting up, organising and functioning of the European Works Council, adopted on 5 July 2005 and republished in the Official Journal of Romania on 13 April 2007. The latter one was adopted for the transposition of Article 15 of the Directive.

Government Decision no. 188/2007, Law 217/2005 and Government Ordinance 48/2006 amending Law 217/2005 and Law 468/2006 approving GO 48/2006 were drafted by the Ministry of Labour and Social Protection and, as any legal act initiated by the Ministry of Labour, it was subject to consultations with the national organisations of the social partners within the social dialogue commission of the Ministry of Labour (where the trade unions, employers’ organisations and Government are all represented). Prior to be forwarded to the Parliament it was submitted to the Economic and Social Council (ECS) to obtain their consultative advice. The ECS is an autonomous public institution of national interest, established for the purpose of facilitating the social dialogue at the national level and ensuring the stability and social peace environment. The Economic and Social Council is a tripartite institution, being composed by an equal number of representatives of the employers, employees and Government (45 members, the representatives of the employers and employees being appointed by the trade unions and employers’ associations that meet the representation criteria at the national level). It examines and formulates advisory opinions on draft normative acts (laws, Government decisions and ordinances), having a consultative role in this respect.

The Ministry of Labour, Family and Social Protection mentioned that GD 188/2007 was subject to the debates with the social partners. From statements of the trade unions interviewed, it results that they have been consulted in accordance with the above mentioned consultation procedures (Cartel Alfa).

However, no comments and no proposals have been made in relation to the drafts of the legal acts on this subject. GD 188/2007 and Law 217/2005 were not amended because their provisions on information, consultation and other mechanisms of involvement of employees in the affairs of European cooperative societies were not implemented in practice and, therefore, no implementation issues or clarification requirements have been identified.

Since Law 217/2005 on setting up, organising and functioning of the European Works Council was adopted for the transposition of Article 15 of the Directive and GD 188/2007 on information, consultation and other mechanisms of involvement of employees in the affairs of European cooperative societies, was adopted on 20 February 2007 and published in the Official Journal of Romania on 7 March 2007, it results that the transposition was not ensured on January 1st, 2007, the date of Romania's accession to the European Union.

1.3 Stakeholder involvement in transposition

As mentioned above, the stakeholders were involved in the transposition only on the occasion of the procedures carried out within the SCE. These procedures were finalised with no comments from their side. As it results from the interviews, this situation was due to the fact that the stakeholders are not familiar with the concept of the European Cooperative Society. Moreover, since in practice there was no need to set up such entity and there were no participation companies in European cooperative societies in Romania, the stakeholders were not interested yet in the elaboration of the legislation in this area and the theoretical problems that could occur.

2 LEGAL ANALYSIS OF THE TRANSPOSING MEASURES FOR DIRECTIVE 2003/72/EC AND THEIR PRACTICAL IMPLEMENTATION

As an important remark, it should be noted that the Romanian legislation on the European Cooperative Society and information, consultation and other mechanisms of involvement of employees in the affairs of European cooperative societies is not implemented in practice. No European cooperative societies headquartered in Romania and no participation companies from Romania in European cooperative societies have been identified.

2.1 Objective and Definitions (Articles 1 and 2)

2.1.1 Scope (Article 1)

The scope of the Directive – the involvement of employees in the affairs of European Cooperative Societies as referred to in Regulation (EC) No 1435/2003 – was effectively transposed.

2.1.2 Definitions (Article 2)

The definitions have also been correctly (mostly literally) transposed. However, one of the definitions was incompletely transposed.

According to Article 2 (b) of the Directive, ‘participating legal entities’ means 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. In transposing this definition, Article 2 (b) of the GD 188/2007 defines the “participating legal entities” as companies, including cooperatives, directly participating in the

establishing of an SCE. Consequently, it should be noted that the Romanian text refers to “companies”, while the Directive refers to “companies and firms”, “as well as legal bodies”. The definition of the Directive is larger and it was not completely transposed by the Romanian legislation.

In respect of all the other definitions it should be noted that the GD 188/2007 is not consistent in its use of terminology. The terms that are used for “establishment” are “branch or other corresponding establishment”; “undertakings”; and “units”. However, in addition to subsidiaries, such wording also covers any entity which does not have legal personality. The transposition of such definitions is thus ensured.

The definition of the European Cooperative Society is formulated by the GD 188/2007 as “any society established in accordance with Regulation (EC) No 1435/2003 on European Cooperative Society Statutes”. Although the Romanian text makes reference to “society” instead of “cooperative society” the transposition is ensured, because it also refers to Regulation (EC) No 1435/2003.

The definitions of “subsidiary”, “concerned subsidiary or establishment”, “representative body”, “special negotiating body”, as well as “involvement of employees”, “information”, “consultations” and “participation”, have been effectively transposed.

As regards the definition of “employees’ representatives, defined as “the employees’ representatives provided for by national law and/or practice”, this definition was effectively transposed by the Romanian text identifying the employees’ representatives as the “representatives of the trade unions or, in case there is no such trade union, the persons elected and empowered to represent the employees according to the law”.

No implementation issues have been identified in practice.

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

The provisions of Article 3 of the Directive were generally effectively transposed. The majority of the provisions has been transposed literally.

It should be noted that in transposing Article 3.1 of the Directive – although the Directive’s requirement does not provide expressly that it refers to SCE having its registered office in the respective country – the Romanian text refers to “an SCE having its registered office in Romania”. Thus, according to Article 3 (1) of GD 188/2007, where the management or administrative organs of participating legal entities draw up a plan for the establishment of an SCE having its registered office in Romania, they shall as soon as possible take the necessary steps, including providing information on the identity of the participating legal entities and their subsidiaries and units, as well as the number of employees, to start negotiations with the representatives of the legal entities’ employees on the modalities for the involvement of employees in the SCE. The inclusion in the Romanian text of the wording “having its registered office in Romania” does not affect transposition, because according to Article 6 of the Directive the legislation applicable to the negotiation procedure provided for in Articles 3, 4 and 5 shall be the legislation of the Member State in which the registered office of the SCE is to be situated.

One case of incomplete transposition regards the Directive’s requirement laid down in Article 3.2. (b). It provides that Member States shall determine 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 in their territories. They 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. Such measures must not increase the overall number of members. The methods used to nominate, appoint or elect employee representatives should seek to promote gender balance. Article 4 of the GD 188/2007 provides for method to be used for the election or appointment of the members

of the special negotiating body as requested by the Directive. However, in transposing such provision the Romanian legislation does not include the requirements that, as far as possible, the members shall include at least one member representing each participating legal entity which has employees in the Member State concerned and that Such measures must not increase the overall number of members. It can be argued that the requirement of using methods to nominate, appoint or elect employee representatives which promote gender balance is ensured by the non-discrimination legislation.

No implementation issues have been identified in practice with respect to the legal provisions on the creation of a special negotiating body, as there it has not been identified any case when such body was created.

2.3 The content of the agreements (Article 4)

Although the most part of the Directive's requirements have been effectively transposed, some issues of non-conformity in relation to the content of the agreements have been identified.

Article 4.2 (a) of the Directive on the content of the agreement to be concluded between the competent organs of the participating legal entities and the special negotiating body lists the elements that must be included in such agreement, making reference to paragraph 4. Article 10.2 of GD 188/2007 transposing this provision makes reference to Article 6, while art 6 transposes paragraph 4 of Article 3 and not paragraph 4 of Article 4. Transposition is incorrect due to wrong cross-reference; however this is a minor issue of non-conformity.

An issue of incomplete transposition was found in the legislation transposing Article 4. 2 (h) of the Directive. The Directive formulates that the agreement must include the date of entry into force of the agreement and its duration, cases where the agreement should be renegotiated 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. According to Article 10 (2) (h) of the GD 188/2007 the agreement shall include the date of entry into force of the agreement and its duration, cases where the agreement should be renegotiated and the procedure for its renegotiation. The transposition is incomplete because the Romanian text does not make any reference to "the event of structural changes in the SCE and its subsidiaries and establishments which occur after the creation of the SCE". Such reference should be provided by the law as to impose to the parties to take it into account.

No implementation issues have been identified with respect to the legal provisions on the content of the agreement, as no case of concluding such agreement between the competent organs of the participating legal entities and the special negotiating body has been identified in practice.

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

2.4.1 Procedural rules (Articles 5 and 6)

The Directive's provisions on duration of the negotiations and legislation applicable to the negotiation procedure have been effectively transposed.

2.4.2 Standard rules (Article 7 and Annex)

Directive's provisions on standard rules have been effectively transposed; the majority of which was transposed literally.

No case of negotiations in view of concluding an agreement between the competent organs of the participating legal entities and the special negotiating body has been identified in practice and therefore, no implementation issues were found.

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)

With respect to the rules applicable to SCEs established exclusively by natural persons or by a single legal entity and natural persons 2 cases of incorrect transposition were identified. Although both provisions were (almost) literally transposed, both provisions did not include correct cross-references.

Thus, in transposing Article 8.1 of the Directive, Article 24 (1) of GD 188/2007 provides that 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 Article 3 - 11 shall apply. Article 3-11 of GD transpose Article 3-5 of the Directive while the Directive's provision refers to Article 3-7. This can be considered a minor issue.

Transposition of Article 8.3 of the Directive by Article 26 of the GD 188/2007 is also incorrect. Article 26 provides that if, after the registration of an SCE referred to in Article 24 paragraph (2), at least one third of the total number of employees of the SCE, its subsidiaries and undertakings in at least two different member states so requests, or if the total number of employees reaches or exceeds 50 employees in at least two member states, the provisions of Article 3-11 shall be applied, *mutatis mutandis*. In this case, the words 'participating legal entities' and 'concerned subsidiaries or undertakings' shall be replaced by the words 'SCE' and 'subsidiaries or undertakings of the SCE' respectively. There is wrong cross reference to Article 3-11 of GD transposing Article 3-5 of the Directive while the Directive's provision refers to Article 3-7. This can also be considered a minor issue.

All the other requirements of Article 8 of the Directive have been correctly transposed. However, no implementation issues have been found with respect to the provisions of GD 188/2007 transposing Article 8 of the Directive.

2.5.1 Participation in meetings (Article 9)

In transposing Article 9 of the Directive 2 non-conformity issues have been found

Article 9 of the Directive requires that the employees of the SCE and/or their representatives will be entitled to participate in the general meeting or, if it exists, in the section or sectorial meeting, with the right to vote, in some specific circumstances. As distinct from the Directive, Article 27 of the GD 188/2007 does not ensure the participation in the "section or sectorial meetings". Therefore, the transposition can be considered incomplete.

The transposition of Article 9 (3) (ii) of the Directive is incorrect due to wrong cross-reference. Article 27 (3) of GD 188/2007 refers to one of the cases when the employees of the SCE and/or their representatives are empowered to participate in the general meeting with the right to vote. This is the case of an SCE established by means other than transformation, when a participating cooperative was governed by such a system and some other criteria are accomplished. According to the GD one of such criteria is that Article 23 b) applies, while the Directive refers to Article 7 (1) (b) and Part 3 of the Annex to the Directive which are not transposed by Article 23 of GD. This was considered a minor issue.

All the other requirements of Article 9 of the Directive have been correctly transposed. Neither with respect to such provisions have any implementation issues been noticed.

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

All the mandatory provisions of Article 10, 11 and 12 were effectively transposed except for Article 10.4 requiring that 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 or of a participating legal entity demands confidentiality or does not give information. In transposing this requirement, Article 30 of GD 188/2007 makes reference to members of the special negotiation body or of the representative body, or the employees' representatives, as distinct from the Directive referring only to employees' representatives. However, the Romanian text refers only to the case when such persons consider unjustified the refuse of the supervisory or administrative organ of an SCE or of a participating legal entity to provide information due to confidentiality reason, and does not make any reference to the situation when they demand confidentiality, which is expressly mentioned by the Directive.

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

All mandatory provisions of Article 13, 14 and 15 were effectively transposed. Provisions of Article 15 (1) and (2) were transposed by Law 217/2005 on setting up, organising and functioning of the European Works Council.

As regards the conflicts occurred in case of failure by the employer to implement the legal provisions, it is to be noted that conflicts related to information, consultation and other mechanisms of involvement of employees in the affairs of European cooperative societies represent labour conflicts. Therefore, when such conflicts are brought before the courts, the competence to judge them as first instance is given to the county courts ("tribunale") or specialized county courts ("tribunale specializate", if specialised courts are established in that particular county) in the area where the plaintiff has his/her official headquarters/home address. The panel of judges includes two judges and two judicial assistants (one judicial assistant is appointed among those designated by the representative organisations of workers and one judicial assistant among those designated by the representative organisations of employers). Judicial assistants have a consultative vote in deliberations and sign the court's decisions. Their opinions are mentioned in decisions, and any dissenting opinion is motivated. The courts of appeal are competent as courts of final instance (recourse) in labour conflicts; they consist of a three-judge panel. In settlement of labour conflicts, employer has the burden of proof in all instances of labour conflict. No judicial expenses are due. To a large extent, this eliminates the financial obstacle to the judicial defence of labour rights infringements. In addition, The whole procedure is characterised by emergency principle (rules on summoning, probation, establishing the hearings, etc.) and although it's duration cannot be assessed, from lawyers' experience it may last, in average, 3-6 months – the first stage and 2-3 months the appeal stage ("recurs").

As the legal provisions on information, consultation and other mechanisms of involvement of employees in the affairs of European societies were not implemented since no case of ECS was identified, no case law was found.

In addition, it is to be mentioned that, according to the LC, the Internal Regulation employers are obliged to adopt must include rules on the settlement of employees' grievances.

On the other side, the territorial labour inspectorates (TLIs) are entitled to control the observance by the employers of the labour legislation provisions either by their own initiative or upon request of one employee. Labour Inspectors have the right to apply sanctions (fines) in case he/she ascertains that the employer committed an administrative offence as such are expressly provided by the law. For example, inclusion in the employment contracts of any clauses which contravene to the legal

provisions is considered administrative offence (“contravenție”) and shall be sanctioned by the labour inspectors by fines from 2,000 to 5,000 lei (approx. 450 – 1,200 euro).

According to Article 33 of GD 188/2007, breaching of the obligation on the information and consultation of the employees within an SCE represent an administrative offence and shall be sanctioned according to the provisions of Law no. 467/2006 establishing a general framework for informing and consulting the employees.

Under the Law 467/2006 the following deeds represent offences and shall be sanctioned as follows:

- by fine from 1.000 RON (approx 250 euro) up to 20.000 RON (approx 5.000 euro) the breach by the employer of the obligation to provide the employees’ representatives with the information referred at Article 5 (1);
- by fine from 2.500 RON (approx 600 euro) up to 25.000 RON (approx 6.000 euro) the breach by the employer of the obligation to undertake consultations according to Article 5 (3);
- by fine from 5.000 RON (approx 1.200 euro) up to 50.000 RON (approx 12.000 euro), providing, under Article 5 (2), in bad faith, with incorrect or incomplete information, not enabling the employees' representatives to draft an adequate opinion in view of preparing for subsequent consultation

Moreover, the Labour Inspectors have the right to:

- Require an employer to remedy any infringement of the rules, immediately or within a certain period of time;
- Ask, where necessary, for modification of installations or technological processes used, if workers’ safety is not ensured;
- Impose immediate interruption or suspension of work activity in cases where he/she assesses there to be an imminent danger of accident or disease for workers involved in work process or for other persons;
- Impose appropriate measures in the event the employer’s manager does not comply with his legal obligations;
- Inform criminal investigation authorities about those situations when any infringement qualifies as a crime.

The above-mentioned measures may be imposed by the Labour Inspector in the event that any compulsory provision (not only of those laid down within the law, but also those laid down in other norms and regulations) is breached, even if such breaches are not expressly considered “contravenție”. According to Law 108/1999 on Labour Inspection, the refusal by any employer, whether a natural or legal person, to comply with the measures imposed by the Labour Inspector constitutes an offence (“contravenție”) and the employer may be subject to fines of between 3.000 lei and 10,000 lei (approx. 700 – 2,400 euro). In addition, Law no. 108/1999 stipulates that if an employer repeatedly commits serious infringements, the Labour Inspection may request his removal from the Trade Registry.

No information on the sanctions imposed by the labour inspectors has been found.

2.8 Standard rules (Annex)

Regarding the annex to the Directive, its provisions were generally effectively transposed. However, there are several cases of incorrect transposition due to cross reference: items 1 (b) 1st part and 2nd part, 1 (e), 1 (g) 1st part and 2nd part.

3 AFTER THE IMPLEMENTATION OF DIRECTIVE 2003/72/EC: PROGRESS OR REGRESSION?

3.1 The situation after transposition in Romania

Currently, agriculture and handicraft cooperatives are the most known cooperatives in Romania. In addition to the agriculture cooperatives acting in the agriculture branch, the handicraft cooperatives execute a large variety of products and services delivery in more than 20 industrial branches and are spread all over the country; such cooperatives represent small and medium size productive units (25 to 100 persons). The activity of the handicraft cooperatives is carried out in the area of production and exportation of: wooden products, products made of metal, textiles and leather products, glass and ceramic products, folk articles, as well as services provided to population and companies such as banking services (banks with cooperative capital), marketing, import-export activities, publicity and organizing trade fairs and exhibitions, tourism, fashion tailoring, clothes and footwear repairing, body care (hair cutting, hair dressing, cosmetic care), repairing of TV, radio, refrigerators, washing machines, vacuum cleaners, cars.

According to the publicly available information, there are around 500-600 handicraft cooperatives in Romania, comprising around 27.000 persons, out of whom around 24.000 persons are members and perform their activity as members of such cooperatives. No information has been found on the number of agriculture cooperatives and their employees. Despite acting in many branches of activity, the cooperatives do not have an important public exposure.

In addition to low public exposure, the GD 188/2007 on information, consultation and other mechanisms of involvement of employees in the affairs of European cooperative societies generally – which generally ensures a good transposition of the ECS Directive – shows a rather large number of cases on non-conformity. Therefore, GD 188/2007 should be amended as to ensure full compliance and remove the cross-references.

As regards the implementation, as mentioned, the ECS Directive is not implemented in practice due to at least the following reasons: the concept of European Cooperative Society is not yet familiar for the stakeholders; there are no European cooperative societies in Romania, there are no participating companies from Romania in European cooperative societies.

As per the expert's experience, some cases of participation of companies from Romania in European societies (SE) have been found. In such cases the Romanian entities tried to follow the legal requirements but when finding out that a detailed procedure for the election of the members of the negotiation body is not expressly provided by the law, they were not interested anymore in the legal provisions. However as regards information, consultation and other mechanisms of involvement of employees in the affairs of European societies, there is another legal act which is applicable (GD 187/2007).

In Romania, in case of SEs the members of the special negotiating body are appointed by the representatives of the employees employed in Romania. In case such representatives do not exist, the members of the special negotiating body shall be appointed with the majority of the votes of the employees employed in Romania. For such cases, the employers generally organized the elections because the employee cannot succeed to get organized by their own.

As regards the negotiation and other subsequent procedures, the legislation of the country where the SE had its headquarters was applied.

The expert appreciates as relevant the above comparison with the case of SEs because it is highly likely that the same approach will be considered in case the ECS-related legislation will be implemented.

3.2 Stakeholder views on implementation

As a result of the context explained above, the stakeholders have not been interested in amending the legislation on information, consultation and other mechanisms of involvement of employees in the affairs of European cooperative societies.

The trade unions interviewed (BNS, FSIA, Cartel Alfa) declared that they do not have information on the existence of any European Cooperative Society in Romania or participating companies from Romania in European cooperative societies and on the implementation of the legislation on information, consultation and other mechanisms of involvement of employees in the affairs of European cooperative societies the concept of European Cooperative Society. The stakeholders are not yet familiar with the meaning of the European Cooperative Society. FSIA mentioned that in the alimentary branch there are many multinational companies (Heineken, InBev, Coca Cola, Nestle, Friesland, Cargill), but the union does not believe that any of these companies is a European Cooperative Society.

4 CONCLUSION

The Directive 2003/72/EC of 22 July 2003 supplementing the Statute for a European Cooperative Society with regard to the involvement of employees has been transposed into the Romanian legislation through GD 188/2007 on information, consultation and other mechanisms of involvement of employees in the affairs of European cooperative societies. Especially Article 15 (1) and (2) of the Directive was transposed by Law no. 217/2005 on setting up, organising and functioning of the European Works Council.

Although the transposition is generally good, several issues of non-conformity have been found – as described earlier in the report. Such issues should be amended to ensure full transposition.

As above mentioned, GD 188/2007 is not implemented in practice since no case of ECS or participating companies from Romania in ECS was identified. However, no proposals for amendment have been drafted.

Given this situation, the expert appreciated that it would be useful for the stakeholders, especially for the employees and for the trade unions, carrying out by the public authorities of some specific information campaigns to increase the awareness of the stakeholders on the European Cooperative Society and the applicable legislation.

BIBLIOGRAPHY

None

STAKEHOLDERS CONSULTED FOR THE PREPARATION OF THIS REPORT

Stakeholder	Type of organisation - CA - Labour Inspectorate - employers' organisation - trade union - employee representative - other practitioners	Date	Means: - telephone conversation - visit
Ministry of Labour, Family and Social Protection	Public authority	18.06.2009	- answers in writing to the questions from the interview protocol. Due to the very busy schedule, they did not have the time for the interview.
Blocul National Sindical	National Trade Union (Trade Union Confederation)	03.06.2009	- interview
Federatia Sindicatelor din Industria Alimentara (Food Industry Trade Union Federation)	Branch Trade Union (Trade Union Federation)	18.06.2009	- interview
Cartel Alfa	National Trade Union (Trade Union Confederation)	22.06.2009	- interview
Consiliul National al Intreprinderilor Private Mici si Mijlocii (National Council of Small and Medium Sized Private Enterprises in Romania)	National Employers' Association (Trade Union Confederation)	Contacted on 15.06.2009 and 19.06.2009	- no answer
Labour Inspection	Public authority	Contacted on 15.06.2009	no responses to interview questions
Lawyers	Law offices	When I had the opportunity to meet them during my lawyer activity	- conversations

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

ANNEX II: List of national implementing measures

GD188/2007 on information, consultation and other mechanisms of involvement of employees in the affairs of European cooperative societies.

Law no. 217/2005 on setting up, organising and functioning of the European Works Council, republished.

ANNEX III: Selected national case law

None