CALL FOR TENDERS
No ENTR/2009/021

Study on the implementation of the Regulation 1435/2003 on the Statute for European Cooperative Society (SCE)

Open procedure (18/04/2009, OJ 2009/S 75-107905)

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1. **PRELIMINARY INFORMATION CONCERNING THE INVITATION TO TENDER**

These specifications follow the publication of:

- the prior information notice in OJ S – 2008/S 245-325501 and,

1.1. **NATURE OF THE CONTRACT**

This call for tenders concerns a service contract entitled “Study on the implementation of the Regulation 1435/2003 on the Statute for European Cooperative Society (SCE)”.

The aim of this call for tenders is to award a contract for a study on the implementation of the Regulation 1435/2003 on the Statute for European Cooperative Society (Societas Cooperativa Europaea - SCE) in the EU Member States and EEA countries (Norway, Iceland and Liechtenstein), rules applied to the SCE, national legislation on cooperatives, and the impact of the Statute on the national legislation and the promotion of cooperatives in EU countries. The study will also include recommendations for future legislation.

The target audience will be policy makers and stakeholders interested in the sector of cooperatives.

1.2. **BACKGROUND**

1.2.1. **General remarks**

In 2003 the Council adopted the Statute for a European Cooperative Society\(^1\) the Societas Cooperativa Europaea, hereinafter SCE, in order to facilitate the creation of cross border cooperative structures and to enable them to compete with other European transnational business forms. The Statute consists of a Regulation containing the basic rules on creation, functioning, and management of European cooperatives and of a Directive outlining the rules on mandatory worker participation in the decision-making process. Member States had until August 2006 to introduce measures facilitating the creation of SCEs.

For the SCE Directive there is an obligation of the Member States to adopt internal measures and to communicate them to the Commission\(^2\). The Regulation however does not contain explicit similar obligation imposing to Member States to inform the Commission on the provisions allowing the incorporation and functioning of... 


\(^2\) The present call for tenders aims at the commissioning of a study referring, amongst other things, to the national measures taken in accordance to the Regulation, while the measures adopted by the Directive make the subject of another two studies. The first one has finished in 2007 and covers the examination of the implementation of 17 Member States (not published yet in the Commission site) and the new one of 2008 will cover the rest: see http://ec.europa.eu/social/main.jsp?catId=626&langId=fr&callId=176&furtherCalls=yes
European cooperatives, as the Regulation is an instrument which in principle is directly applicable in all Member States³.

The study is undertaken in the framework of the Competitiveness and Innovation Framework Programme (CIP) (2007-2013), Entrepreneurship and Innovation Operational Programme (EIP)⁴, Implementing Measure No ENT/CIP/09/B/N10S00 - Follow-up of the implementation of the European Statute for cooperatives. The CIP related objective is: (b) Creation of an environment favourable to SME co-operation, particularly in the field of cross-border co-operation.

The study will be used by the Commission in order, inter alia,

- To draft the report foreseen in Article 79 of the European Cooperative Regulation which provides that: “Five years at the latest after the entry into force of this Regulation (i.e. August 2011), the Commission shall forward to the Council and the European Parliament a report on the application of the Regulation and proposals for amendments, where appropriate.”⁵

- To be the basis of possible future work of the Commission together with public authorities and co-operative organisations, to ensure improvements of national co-operative legislation, that will help creation and growth of cooperatives.

An indicative (non-exhaustive) list of relevant information and useful documents is available in Annex 5.8. “Additional Information”

1.3. STARTING DATE OF THE CONTRACT AND DURATION OF THE TASKS

The contract shall enter into force on the date on which it is signed by the last contracting party.

It is expected to be signed in the third quarter of 2009.

The duration of the tasks shall not exceed 12 months.

The execution of the tasks may not start before the contract has been signed. The period of execution of the tasks may be extended, only with the written agreement of the contracting parties, before the end of the period originally stated in the contract.

³ In this context, the Commission, in order to accompany the introduction of the Statute, over the period 2004–2006, invited government representatives and experts from various organizations to a series of workshops at which the provisions of the Statute were presented. For the minutes of the meetings see http://ec.europa.eu/enterprise/entrepreneurship/coop/index.htm.


⁵ As it was argued by the High Level Group of experts mandated by the Commission to analyze the Modern Regulatory Framework of European Company Law (4/11/2002) “There are important questions deserving analysis in the future application of the SCE Regulation. It will be interesting to see how the SCE relates to the national forms of co-operatives. Will the SCE indeed be used for trans-national restructurings and joint ventures? If so, this may enhance the competitiveness of co-operatives” http://ec.europa.eu/internal_market/company/modern/index_en.htm
1.4. **PERIOD OF VALIDITY OF THE TENDER**

The offer must remain valid for a period of 8 months following the final date for submitting tenders (see below). During this period, the tenderer may not modify the terms of his tender in any respect.

1.5. **DATE AND PLACE OF OPENING OF THE TENDERS**

Tenders will be opened at **9:30** on **17.06.2009** at the following location:

```
Office address:
Meeting Room BREY 12/A
European Commission
Enterprise and Industry Directorate-General
Unit E3 – Craft, small businesses, cooperatives and mutuals
Avenue d’Auderghem 45
BE-1040 Brussels- Belgium
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An **authorised representative** of each tenderer may attend the opening of the bids. Companies wishing to attend are requested to notify their intention by sending a fax or e-mail at least 48 hours in advance to the address given under 1.6. This notification must be signed by an authorised officer of the tenderer and specify the name of the person who will attend the opening of the bids on the tenderer's behalf.

1.6. **CONTACT BETWEEN THE TENDERER AND THE COMMISSION**

Contacts between the contracting authority and tenderers are prohibited throughout the procedure save in **exceptional circumstances** and under the following conditions only:

- **Before the final date for submission of tenders:**
  
  * At the request of the tenderer, the contracting authority may provide additional information solely for the purpose of clarifying the nature of the contract.
  
  * The Commission may, on its own initiative, inform interested parties of any error, inaccuracy, omission or other clerical error in the text of the call for tenders.

- **After the opening of tenders:**

  If clarification is requested or if obvious clerical errors in the tender need to be corrected, the contracting authority may contact the tenderer provided the terms of the tender are not modified as a result.

The requests for additional information may be made **to the address below** by letter, fax or e-mail.
Insofar as it has been requested in good time, the additional information will be made available to all economic operators who requested specifications or showed interest in submitting a bid no later than six calendar days before the final date for the receipt of bids or, in the case of requests for information received less than eight calendar days before the final date for the receipt of bids, as soon as possible after the request for information has been received.

Potential tenderers are encouraged to formulate, at least six days before the time limit to submit tenders, any remark, complaint or objection they would have in relation to all aspects of this call for tender in order that the Commission can evaluate the need for corrective measures and implement them before the submission of tenders.

The answers to the requests for additional information can also be found at the following Internet address:

http://ec.europa.eu/enterprise/contracts-grants/calls-for-tenders/index_en.htm

(Section “Current Call for Tenders”)

1.7. TERMS OF PAYMENT

Payments shall be made in accordance with Articles I.3, I.4 & II.4 of the draft service contract (Annex 5.2).

The payment scheme will consist of one **pre-financing** of 10%, one **interim** payment of 40% and the **balance**.

The schedule and the procedure for the approval of payments and the documents to be submitted are described in Articles I.4, II.4, II.5 and II.7 and in Annex I to the draft service contract referred to above.

1.8. GUARANTEES

The Contractor may be required to provide a guarantee for pre-financing of 10% of the amount specified under I.3.1 of the contract, in compliance with article II.4.1 of the draft contract. The Commission reserves the right to cancel the pre-financing foreseen, according to its management risk analysis or in the case the awarded tenderer refuses such pre-financing guarantee, and to modify the final version of the contract accordingly.
1.9. **GENERAL TERMS AND CONDITIONS FOR THE SUBMISSION OF TENDERS**


Participation in tendering procedures is open on equal terms to all natural and legal persons from one of the EU Member States and to all natural and legal persons in a third country which has a special agreement with the Communities in the field of public procurement on the conditions laid down in that agreement.

Where the Plurilateral Agreement on Government Procurement concluded within the WTO applies, the contracts are also open to nationals of the countries that have ratified this Agreement, on the conditions it lays down. In that connection, it should be noted that the services under Annex IIB to Directive 2004/18/EC and the R&D services listed in category 8 of Annex IIA to that Directive are not caught by the Agreement.

Operators in third countries which have signed a bilateral or multilateral agreement with the Communities in the field of public procurement must be allowed to take part in the tendering procedure on the conditions laid down in this agreement. The Commission refuses tenders submitted by operators in third countries which have not signed such agreements for the present call for tender.

Submission of a tender implies acceptance of the terms and conditions set out in this invitation to tender, in the tendering specifications and in the draft contract and, where appropriate, waiver of the tenderer's own general or specific terms and conditions. It is binding on the tenderer to whom the contract is awarded for the duration of the contract.

Once the Commission has accepted the tender, it shall become the property of the Commission and the Commission shall treat it confidentially.

The Commission shall not reimburse expenses incurred in preparing and submitting tenders.

The Protocol on the Privileges and Immunities or, where appropriate, the Vienna Convention of 24 April 1963 on Consular Relations shall apply to this invitation to tender.

Variants are not allowed.
1.10. **NO OBLIGATION TO AWARD THE CONTRACT**

This invitation to tender is in no way binding on the Commission. The Commission’s contractual obligation commences only upon signature of the contract with the successful tenderer.

Up to the point of signature, the contracting authority may either abandon the procurement or cancel the award procedure. This decision must be substantiated and the candidates or tenderers notified.

No compensation may be claimed by tenderers whose tender has not been accepted, including when the Commission decides not to award the contract.

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1.11. **PLACE OF PERFORMANCE**

The place of performance of the tasks shall be the Contractor's premises or any other place indicated in the tender, with the exception of the Commission's premises.

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1.12. **SUBCONTRACTING**

Subcontracting is defined as the situation where a contract has been or is to be established between the Commission and a contractor and where the contractor, in order to carry out that contract, enters into legal commitments with other legal entities for performing part of the service. However, the Commission has no direct legal commitment with the subcontractor(s).

At the level of the liability towards the Commission, tasks provided for in the contract may be entrusted to subcontractors, but the contractor retains full liability towards the Commission for performance of the contract as a whole.

Accordingly:

The Commission will treat all contractual matters (e.g. payments) exclusively with the contractor, whether or not the tasks are performed by a subcontractor;

The Commission will privilege direct contacts with the contractor, who is responsible for executing the contract;

Under no circumstances can the contractor avoid liability towards the Commission on the grounds that the subcontractor is at fault.

A contract which includes subcontracting is subject to certain general conditions in particular the provisions on subcontracting, checks and audits, and confidentiality. Where justified by the subject matter of the contract, a statement of confidentiality may be required to be submitted to the Commission. The subcontracting arrangement between the contractor and his subcontractor is supposed to render directly applicable all those contractual obligations with regard to the Commission to the subcontractor.

Consequently, the bid must clearly identify the subcontractor(s) and document their willingness to accept the tasks and their acceptance of the terms and conditions set
out in 1.9 above, in particular article II.17 of the standard service contract by returning the form in annex 5.5, filled in and signed.

Tenderers must inform the subcontractor(s) and include in their sub-contracting documents that Article II.17 of the standard service contract (Annex 5.2) may be applied to sub-contractors.

Once the contract has been signed, Article II.13 of the above-mentioned service contract shall govern the subcontracting.

1.13. **JOINT OFFERS**

A joint offer is a situation where an offer is submitted by a group of tenderers. If awarded the contract, the tenderers of the group will have an equal standing towards the Commission in executing a supply, service or works contract.

The Commission will not request consortia to have a given legal form in order to be allowed to submit a tender, but reserves the right to require a consortium to adopt a given legal form **before the contract is signed** if this change is necessary for proper performance of the contract. This can take the form of an entity with or without legal personality but offering sufficient protection of the Commission’s contractual interests (depending on the Member State concerned, this may be, for example, a consortium or a temporary association).

Grouping of firms must nominate one party to be responsible for the receipt and processing of payments for members of the grouping, for managing the service administration, and for coordination. The documents required and listed in the present specifications must be supplied by every member of the grouping, the checklist in annex 5.7 will help verifying the level of information to be provided according to the role of each entity in the tender.

Each member of the grouping assumes a joint and several liability towards the Commission.

**The offer has to be signed by all members of the group.** However, if the members of the group so desire they may grant an authorisation to one of the members of the grouping. In this case they should attach to the offer a power of attorney (see model in annex 5.6). For groupings not having formed a common legal entity, model 1 should be used, and for groupings with a legal entity in place (model 2).

**The contract will have to be signed by all members of the group.** If the members of the group so desire, they may grant authorisation to one of the members of the grouping by signing a power of attorney. The same model as above duly signed and returned together with the offer (see annex 5.6) is valid also for signature of the contract.

Each member of the grouping assumes a joint and several liability towards the Commission.
Partners in a joint offer assume joint and several liability towards the Commission for the performance of the contract as a whole.

Statements, saying for instance: “that one of the partners of the joint offer will be responsible for part of the contract and another one for the rest”, or “that more than one contract should be signed if the joint offer is successful”, are thus incompatible with the principle of joint and several liability. The Commission will disregard any such statement contained in a joint offer, and reserves the right to reject such offers without further evaluation, on the grounds that they do not comply with the tendering specifications.

2. FORM AND CONTENT OF THE TENDER

2.1. GENERAL

Tenders must be signed by the tenderer or his duly authorised representative. Tenders must be perfectly legible so that there can be no doubt as to words and figures.

Tenders must be clear and concise, with continuous page numbering, and assembled in a coherent fashion (e.g. bound or stapled, etc.).

Tenders must be written in one of the official languages of the European Union.

Tenders must include the following information:

- all the information and documents requested by the Commission in order to assess the tender. In order to help tenderers presenting a complete tender, a checklist of the documents to submit is provided in annex 5.7. This checklist does not need to be included in the tender but we encourage to use it in order to ease the assessment of the tenders;

- the price in euros;

- one specimen signature of an authorised representative on the legal entity form (http://europa.eu/comm/budget/execution/legal_entities_en.htm), and a statement confirming the validity of the tender (preferably in blue ink), the tender must provide evidence of the authorisation to sign in name of the tenderer;

- the name of a contact person in relation to the submission of the bid.

2.2. HOW TO SUBMIT A TENDER

Tenderers shall observe precisely the indications in point 3 and 4 of the invitation to tender in order to ensure their tenders are admissible.

Evidence of timely submission by post or courier service will be constituted by the date of dispatch, the postmark or the date of the deposit slip. In the case of hand-delivery, the signed and dated receipt will serve as evidence.
Late delivery will lead to the non admissibility of the tender and its rejection from the award procedure for this contract. Offers sent by e-mail or by fax will also be non admissible. Envelopes found open at the opening session will also lead to non admissibility of the tender. Consequently, tenderers must ensure that their bids are packed in such a way as to prevent any accidental opening during its mailing.

2.3. STRUCTURE OF THE TENDER

All tenders must be presented in five sections:

Section one: Administrative information – Presentation of the tender (see 2.1 & 2.3.1)

Section two: Evidence relating to the exclusion criteria (see 3.1)

Section three: Evidence relating to the selection criteria (see 3.2.2 & 3.2.3)

Section four: Technical Proposal – Addressing technical specifications and award criteria (see 2.3.2, 3.3 and 4)

Section five: Financial Proposal (see 2.3.3)

2.3.1. Section One: Administrative proposal

a) Tenderers may choose between presenting a joint bid (see 1.13) and introducing a bid as a sole contractor, in both cases with the possibility of having one or several subcontractors (see 1.12).

Whichever type of bid is chosen, the tender must stipulate the legal status and role of each legal entity in the tender proposed and the monitoring arrangements that exist between them and, failing this, the arrangement they foresee to establish if they are awarded the contract (see 1.12 and 1.13).

b) To identify himself the tenderer must fill in a Legal Entity Form and a Financial Identification Form:

- The Legal Entity Form is to be signed by a representative of the tenderer authorised to sign contracts with third parties. There is one form for individuals, one for private entities and one for public entities. Specific forms in each Member State language are available at:


- The Financial identification form shall be duly filled in and signed by an authorised representative of the tenderer and his or her banker. A specific form for each Member State is available at the following Internet address:

The Legal Entity Form must be accompanied by all the information indicated in the form. When neither this form nor the evidence to be attached to them includes the following information, the tender must include:

For private and public entities:

• a legible copy of the notice of appointment of the persons authorised to represent the tenderer in dealings with third parties and in legal proceedings, or a copy of the publication of such appointment if the legislation which applies to the legal entity concerned requires such publication. Any delegation of this authorisation to another representative not indicated in the official appointment must be evidenced.

For Individuals:

• Where applicable, a proof of registration, as prescribed in their country of establishment, on one of the professional or trade registers or any other official document showing the registration number.

All tenderers must provide their legal entity files as well as the necessary evidence. Only subcontractors are requested to provide solely the legal entity file without evidence.

Economic operators already registered as a legal entity in the Commission’s files (i.e. they are or have been contractors of the Commission) are not obliged to provide the evidence requested in the form, on condition they indicate in their offer the references of the procedure and the Commission’s department for which this evidence was already provided.

In case of a joint bid or a bid presenting subcontracting, only the co-ordinator is obliged to return the financial identification form.

2.3.2. Section Four: Technical proposal

Tenderers must include in their bids the technical proposal addressing all aspects detailed in the specifications set out in section 4 below.

The technical proposal must respond to these technical specifications and provide, as a minimum, all the information needed for the purpose of awarding the contract.

Please note that, to grant equal treatment of all tenders, it is not possible to modify offers after their submission in relation to the technical and financial proposals. As a consequence, incompleteness in this section can only result in negative impact for the evaluation of award criteria. Please note also, that proposals deviating from the technical specifications may be rejected for non-conformity.

The technical specifications and the tenderer’s bid shall be integral parts of the contract and will constitute annexes to the contract.

2.3.3. Section Five: Financial proposal

The tenderer's attention is drawn to the following points:

• prices must be expressed in euros;
• **prices should be quoted free of all duties, taxes and other charges, i.e. also free of VAT**, as the Communities are exempt from such charges in the EU under Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Communities of 8 April 1965 (OJ L 152 of 13 July 1967). Exemption is granted to the Commission by the governments of the Member States, either through refunds upon presentation of documentary evidence or by direct exemption.

For those countries where national legislation provides an exemption by means of a reimbursement, the amount of VAT is to be shown separately. In case of doubt about the applicable VAT system, it is the tenderer's responsibility to contact his or her national authorities to clarify the way in which the European Community is exempt from VAT;

• **Prices shall not be conditional and be directly applicable by following the technical specifications.**

• **Prices shall be fixed and not subject to revision.**

• The reference price for the award of the contract shall consist of **the amount in payment of the tasks executed**, as stated in Article I.3.1 of the contract.

For each category of staff to be involved in the project, the tenderer must specify:

- the total labour costs;
- the daily rates and total number of days (man-days) each member of staff will contribute to the project;
- other categories of costs, indicating the nature of the cost, the total amount, the unit price and the quantity. Flat-rate amounts should be avoided. If, exceptionally, they are used, specimen quotations for the flat-rate amounts must be provided;

**Travel and subsistence expenses will not be reimbursed** and should be included in the total amount of the tasks executed.

The tender must include (at least) the missions to participate in the Steering Committee meetings (see details in point 4.1.2).

**Bids involving more than one legal entity must specify the amounts for each legal entity.**

**Tenderers must use the following format to formulate their financial proposal:**

<table>
<thead>
<tr>
<th>Full study period</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Price component</td>
<td></td>
</tr>
<tr>
<td>Total(EUR)</td>
<td></td>
</tr>
<tr>
<td>a) (1) Human resources</td>
<td>Unit price(daily rate in EUR/man-day)</td>
</tr>
</tbody>
</table>
### Person 1 (role)

### Person 2 (role)

### ...

<table>
<thead>
<tr>
<th></th>
<th>Subtotal (1)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Other costs</td>
<td>Unit price</td>
</tr>
<tr>
<td>Travel costs</td>
<td></td>
</tr>
<tr>
<td>Item X</td>
<td></td>
</tr>
<tr>
<td>Item Y</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Subtotal (2)</td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL (1+2)</strong></td>
<td></td>
</tr>
</tbody>
</table>

The Commission will reject tenders where no technical offers or financial offers are proposed.

Non-conformity with the technical specifications in section 4 will also result in rejection from award.

The Commission reserves the right, however, to request clarification or additional evidence in relation to the exclusion and selection stages after the opening within a time-limit stipulated in its request and in the conditions explained in section 1.6.

### 3. ASSESSMENT AND AWARD OF CONTRACT

The assessment will be based on the information provided in the tender. The Commission reserves the right to use any other information from public or specialist sources.

This assessment will be performed by applying the criteria set out in these specifications. To award of the contract, the assessment of admissible bids (see 2.2) will be carried out in three successive stages. Only bids meeting the requirements of one stage will be examined in the next stage.

The aim of each of these stages is:

1) to check, in the first stage (exclusion criteria), whether tenderers can take part in the tendering procedure and, where applicable, be awarded the contract;

2) to check, in the second stage (selection criteria), the technical and professional capacity and economic and financial capacity of each tenderer who has passed the exclusion stage;
3) to assess on the basis of the award criteria the technical and financial offers and establish a ranking list, by order of merit, of all tenders having passed the exclusion and selection stages,

3.1. STAGE 1 — APPLICATION OF EXCLUSION CRITERIA AND EXCLUSION OF TENDERERS

3.1.1. Declaration

Tenderers or their representatives shall provide a declaration on their honour, duly signed and dated in which they:

- state whether or not they are in one or more of the situations referred to in Articles 93 and 94 of the Financial Regulation and detailed in the form;

- undertake to submit to the Commission any additional document relating to the exclusion criteria, that the Commission considers necessary to perform its checks, within seven calendar days following the receipt of the Commission's request.

To this end, tenderers must fill in and sign the form in Annex 5.1 to these specifications.

Where the bid involves more than one legal entity (including subcontractors), each entity must provide the form.

Any total or partial omission for which one or more legal entities involved in the tender are responsible may lead the Commission to exclude the tender from the procedure, in accordance with Articles 93 and 94 of the Financial Regulation.

3.1.2. Grounds for disqualification

In accordance with Articles 93 and 94 of the Financial Regulation, tenderers shall be excluded from the selection and award procedures if they do not satisfy criteria a) to f) specified in the standard form in annex 5.1.

In addition, contracts may not be awarded to tenderers who, during the procurement procedure are subject to a conflict of interest (criteria g) or are guilty of misrepresentation in supplying the information required by the contracting authority as a condition of participation in the contract procedure or fail to supply this information (criteria h) or fall into one of the situations as specified under criteria a) to f).

If a member of a consortium is subject to exclusion, the rest of the consortium shall be excluded.

If a subcontractor is subject to exclusion, the tender shall be excluded.
3.1.3. Evidence

The tenderer to whom the contract is to be awarded shall provide, within the 15 days following the receipt of the letter informing him of the proposed award of the contract and preceding the signature of the contract, the following evidence confirming the declaration referred to in paragraph 3.1.1:

1. The Commission shall accept as satisfactory evidence that the tenderer to whom the contract is to be awarded is not in one of the situations described in point (a), (b) or (e) of Article 93(1) of the Financial Regulation, a recent extract from the judicial record or, failing that, an equivalent document recently issued by a judicial or administrative authority in the country of origin or provenance showing that those requirements are satisfied;

2. The Commission shall accept, as satisfactory evidence that the tenderer is not in the situation described in point (d) of Article 93(1) of the Financial Regulation, a recent certificate issued by the competent authority of the State.

3. Where the document or certificate referred to in paragraph 1 & 2 is not issued in the country concerned and for the other cases of exclusion referred to in Article 93 of the Financial Regulation, it may be replaced by a sworn or, failing that, a solemn statement made by the interested party before a judicial or administrative authority, a notary or a qualified professional body in his country of origin or provenance.

4. Depending on the national legislation of the country in which the tenderer is established, the documents referred to in paragraphs 1, 2, 3 and 3.1.1 shall relate to legal persons and/or natural persons including, where necessary, company directors or any person with power of representation, decision-making or control in relation to the candidate or tenderer. This would be the case when the national legislation concerned gives juridical responsibility of the acts committed by a legal entity (moral persons) to their legal representatives. The tenderer shall provide information on the ownership or on the management, control and power of representation of the legal entity whenever necessary for the proper understanding of the evidence submitted or whenever the Commission requests it.

5. Where they have doubts as to whether tenderers are in one of the situations of exclusion, the Commission may itself apply to the competent authorities referred to in paragraph 3 to obtain any information they consider necessary about that situation.

6. The Commission may waive the obligation of a tenderer to submit the documentary evidence referred to in paragraphs 1 and 2 if such evidence has already been submitted to it for the purposes of another procurement procedure and provided that the issuing date of the documents does not exceed one year and that they are still valid. In such a case, the tenderer shall declare on his honour that the documentary evidence has already been provided to the Commission in a previous procurement procedure and confirm that no changes in his situation have occurred. He shall indicate in its tender all the references necessary to allow the Commission services to check this evidence.
3.1.4. Administrative and financial penalties

By returning the form in Annex 5.1, duly signed, tenderers confirm that they have been notified of the following points.

Administrative or financial penalties may be imposed by the Commission on tenderers who are in one of the cases of exclusion provided for in 3.1.2 above after they have been given the opportunity to present their observations.

These penalties are detailed in Article 96 of the Financial Regulation and Articles 133a and 134b of the Regulation laying down the rules for the implementation of the Financial Regulation. We invite tenderers to read carefully these two articles.

3.2. STAGE 2 - APPLICATION OF SELECTION CRITERIA (SELECTION OF TENDERERS)

This part of the tender concerns the criteria and evidence relating to the technical and professional capacity and economic and financial capacity of the service provider(s) involved in the bid. It should also contain any other document that the tenderer(s) wish(es) to include by way of clarification.

An economic operator may rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. In that case, evidence must be provided that it will have at its disposal the resources necessary for performance of the contract, for example by producing a clear undertaking on the part of those entities to place those resources at its disposal.

If several service providers are involved in the bid, each of them must have the professional and technical capacity to perform the tasks assigned to them in the tender and the necessary economic and financial capacity.

This rule applies to all legal entities once they have chosen to be tenderers. If the tender includes subcontractors, the Commission reserves the right to request evidence of their economic and financial capacity if the tasks subcontracted represent a substantial part of the contract.

3.2.1. Selection criteria

<table>
<thead>
<tr>
<th>SELECTION CRITERIA</th>
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<tbody>
<tr>
<td>1. FINANCIAL AND ECONOMIC CAPACITY</td>
</tr>
<tr>
<td>1.1 Sufficient economic and financial capacity to guarantee continuous and satisfactory performance throughout the envisaged lifetime of the contract:</td>
</tr>
<tr>
<td>1.1.2. Positive equity.</td>
</tr>
<tr>
<td>2. TECHNICAL AND PROFESSIONAL CAPACITY</td>
</tr>
<tr>
<td>The Tenderer (or, if relevant, the consortium) will have to prove the minimum requirements, as follows:</td>
</tr>
</tbody>
</table>
2.1. Minimum composition of the team proposed:

- at least **1 senior staff member** with university degree in law, more than 8 years of work experience in the field of cooperative legislation.
- at least **1 junior staff member** with university degree, more than 3 years of work experience in the field of cooperatives.

All other members of the team (if any) should have at least three years of experience in the field of cooperatives. This does not apply to administrative staff.

2.2. The tenderer (or the consortium) should have at least three years of **experience in providing services in the field of cooperatives** and cooperative movement, and a record of at least three **publications** (e.g. research studies, legal analysis or projects, articles) containing legal and political analysis in the field of cooperatives.

2.3. Adequate and relevant **language skills** to execute the required tasks, including **proficiency in English** (which will be the working language for contacts with the Commission and in which reports will be presented to the Commission) and **knowledge of French** (to access relevant information only available in this language).

2.4. Reliability in terms of **human and technical resources** available and quality control.

These criteria will be assessed on the basis of the documents referred to in 3.2.2 and 3.2.3.

3.2.2. **Evidence of the economic and financial capacity of the service provider(s)**

All tenderers must provide proof of their economic and financial capacity by submitting the following documents:

a) A full copy of the concerned legal entities’ annual accounts (balance sheet, profit and loss account, notes on the accounts and auditors' remarks when applicable) of the last two years, as approved by the general assembly of the company and, where applicable, audited and/or published. These documents must be signed by the authorised representative of the tenderer;

b) Alternatively to a), by filling Annex 5.4, consisting of an extract of the concerned legal entities’ annual accounts (balance sheet, profit and loss account, notes on the accounts and auditors' remarks when applicable) of the last two years, as approved by the general assembly of the company and, where applicable, audited and/or published. These documents must be signed by the authorised representative of the tenderer.

c) a statement of overall turnover and turnover concerning the tasks, supplies or services covered by this contract for the last three financial years;

d) Appropriate statements from banks or evidence of professional risk indemnity insurance, for legal entities facing the impossibility to fully present evidence a).
If, for some exceptional reason which the Commission considers justified, a tenderer is unable to provide one or other of the above documents, he or she may prove his or her economic and financial capacity by any other document which the Commission considers appropriate. In any case, the Commission must at least be notified of the exceptional reason and its justification in the tender. The Commission reserves the right to request any other document enabling it to verify the tenderer's economic and financial capacity.

3.2.3. Evidence of the technical and professional capacity of the service provider(s)

The ability of service providers to perform services will be assessed in particular with regard to their know-how, efficiency, experience and reliability.

Evidence of the technical and professional capacity of the providers involved in the tender may, be furnished on the basis of the following documents:

a) The educational and professional qualifications of the service provider or contractor and/or those of the firm's managerial staff and, in particular, those of the person or persons responsible for providing the services or carrying out the tasks. The Europass curriculum vitae format (http://europass.cedefop.europa.eu/europass/preview.action?locale_id=1) shall be filled in and signed, by each person involved in the execution of the tasks foreseen in the tender. The CV shall specify the different diplomas obtained (copies of which may be requested by the Commission where appropriate) and the expertise and experience relevant to the subject matter of the present invitation to tender. The precise contractual link with the tenderer will also be described. This evidence refers to selection criteria 2.1., 2.2., and 2.3.

b) A list of the principal services provided in the past three years, with the sums, dates and recipients, public or private. This evidence refers to selection criterion 2.2.

c) A list and brief description (or copy) of any previous study, legal analysis or project, publication or other activity carried out in the field of cooperatives, social economy, or similar areas. This evidence refers to selection criterion 2.2.

d) A description of the measures employed to ensure the quality of services, and a description of the firm's study and research facilities; This evidence refers to selection criterion 2.4.

e) A statement of the average annual manpower and the number of managerial staff of the service provider or contractor in the last three years. This evidence refers to selection criterion 2.4.

f) An indication of the proportion of the contract which the service provider may intend to subcontract.

By submitting a tender, each legal entity involved therein accepts the possibility of a
check being carried out by the Commission on its technical capacities and, if necessary, on its research facilities and quality control measures.

*In addition, all tenderers are informed that they may be asked to prove that they are authorised to perform the contract under national law, as evidenced by inclusion in a professional or trade register or a sworn declaration or certificate, membership of a specific organisation, express authorisation, or entry in the VAT register.*

3.3. **STAGE 3 - APPLICATION OF AWARD CRITERIA (ASSESSMENT OF TENDERS)**

The contract will be awarded in favour of the most cost-effective offer (offers the best value for money). The following award criteria will be applied:

<table>
<thead>
<tr>
<th>No</th>
<th>1. Technical quality criteria</th>
<th>Weighting (maximum points)</th>
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</thead>
<tbody>
<tr>
<td>1.</td>
<td>Quality of the methodology proposed for the mapping of the relevant legislation implementing the Regulation (explanations, examination of the options, etc.)</td>
<td>20</td>
</tr>
<tr>
<td>2.</td>
<td>Quality of the methodology proposed for the mapping of the national legislation on cooperatives (literature, comparisons, detailed presentation, etc.)</td>
<td>20</td>
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<tr>
<td>3.</td>
<td>Quality of the methodology proposed for the inventory of existing SCEs and related information.</td>
<td>5</td>
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<tr>
<td>4.</td>
<td>Quality of the methodology proposed for the analysis of the degree of success of the Regulation.</td>
<td>15</td>
</tr>
<tr>
<td>5.</td>
<td>Quality of the methodology proposed for the collection of information on other issues concerning visibility of the cooperative sector.</td>
<td>10</td>
</tr>
<tr>
<td>6.</td>
<td>Quality of the methodology proposed to formulate recommendations (analysis of trends, consultation with stakeholders, etc.)</td>
<td>15</td>
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<tr>
<td>7.</td>
<td>Quality of the team proposed in relation to the services to be performed.</td>
<td>10</td>
</tr>
<tr>
<td>8.</td>
<td>Quality of the proposed overall work programme and planning (e.g. detailed work programme, consistent and realistic time schedule, detailed and proportional allocation of resources).</td>
<td>5</td>
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</tbody>
</table>

**Total number of points**

100

The selected tender is assessed according to the above qualitative award criteria and the weighting applicable to each criterion.

*Tenders scoring less than 70% in the overall points total or less than 50% in the points awarded for a single criterion will be excluded from the rest of the assessment procedure.*
**Award criterion**

| Total price |

**Tenders presenting a total price superior to the maximum amount of 300,000 € will be excluded from the rest of the assessment procedure**

The contract will be awarded to the tender which is the most cost-effective (offers the best value for money) on the basis of the ratio between the total points scored and the price.

<table>
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<tr>
<th>Final Evaluation</th>
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<tr>
<td><em>Total Quality Points / Price</em></td>
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</table>

Tenders should elaborate on all points addressed by these specifications in order to score as many points as possible. The mere repetition of mandatory requirements set out in these specifications, without going into details or without giving any added value, will only result in a very low score. In addition, if certain essential points of these specifications are not expressively covered by the tender, the Commission may decide to give a zero mark for the relevant technical quality award criteria.

3.4. **INFORMATION FOR TENDERERS**

The Commission will inform tenderers of decisions reached concerning the award of the contract, including the grounds for any decision not to award a contract or to recommence the procedure.

If a written request is received, the Commission will inform all rejected tenderers of the reasons for their rejection and all tenderers submitting an admissible tender of the characteristics and relative advantages of the selected tender and the name of the successful tenderer.

However, certain information may be withheld where its release would impede law enforcement or otherwise be contrary to the public interest, or would prejudice the legitimate commercial interests of economic operators, public or private, or might prejudice fair competition between them.

3.5. **AWARD OF THE CONTRACT**

The procurement procedure is concluded by a contract signed by the parties. In this case, the General Terms and Conditions applicable to service contracts referred to above shall apply.
After the period of validity of the tender has expired, conclusion of the contract shall be subject to the tenderer's agreement in writing.

The Commission shall not sign the contract or framework contract with the successful tenderer until a standstill period of 14 calendar days has elapsed, running from the day after the simultaneous dispatch of the award decisions and decisions to reject.

After the award, during standstill period, the Commission will request to the tenderer proposed for award the evidence on exclusion criteria defined in section 3.1.3. If this evidence was not provided or proved to be unsatisfactory the Commission reserves the right to cancel the award procedure or to change the award decision to the benefit of the next best ranked tenderer on condition that he satisfies with the provision of the evidence on exclusion.

3.6. DATA PROTECTION

The follow up of your response to the invitation to tender will require the recording and further processing of personal data (name, address, CV, for example). This data will be processed in accordance with the requirements of Regulation (CE) 45/2001 on the protection of individuals with regard to the processing of personal data by Community institutions and bodies and on the free movement of such data. Except if mentioned otherwise, replies to questions and personal data are necessary for the purpose of assessing your tender according to the specifications of the invitation to tender and will only be processed by DG Enterprise and Industry, Unit E3 for this purpose. You may, upon request, obtain the communication of your personal data and rectify any inaccurate or incomplete personal data. Should you have any queries concerning the processing of your personal data, please address them to DG Enterprise and Industry data protection officer, Unit E 3. As regards to the processing of your personal data, you have a right to recourse at any time to European Data Protection Supervisor.

4. TECHNICAL SPECIFICATIONS

4.1. DESCRIPTION OF TASKS

The purpose of this Call for Tender is to conduct a study on the implementation of the Statute for a European Cooperative Society (SCE), its impact on national legislations concerning cooperatives, and its influence on the promotion of the cooperatives across EU Member States and EEA countries (Iceland, Liechtenstein and Norway). More information in section 1.1. “Nature of the contract”, and in section “1.2 “Background”.

4.1.1. Content of the study

The topics to be covered by the study are listed below.
For the specific case of D) and F), the contractor should propose a mechanism to ensure that the policy makers, stakeholders and other organisations interested in the sector of cooperatives are consulted and that their opinions are taken into account.

A) Mapping of the relevant legislation implementing SCE applicable in the EU Member States and EEA countries.

Background
The Regulation on the SCE foresees that certain measures need to be adopted for its full implementation. Thus

- Article 78(1) states that Member States shall make such provisions as it is appropriate to ensure the effective application of the Regulation.

- Article 78 (2) requires the designation by Member States of certain authorities and the subsequent information of the Commission and the other Member States accordingly.

- Article 8 (1) (c) (i) lays down that in the case of matters not or only partially covered by the Regulation the laws adopted by Member States in the implementation of Community measures relating specifically to SCEs shall apply.

All the above provisions imply that Member States need to adopt measures enabling economic operators to create SCEs.

In addition the text of the SCE stipulates in Article 8 (1) (c) (ii) and (iii) that for matters not or partially regulated by the Regulation the functioning of the SCE and the provisions of its articles of association will be governed by the national cooperative law.

Besides the Regulation contains provisions for the adoption of which the authorities’ intervention is necessary. This is the case of the options offered to Member States, entitling them to introduce, if they wish, supplementary rules on issues like conversion (Article 35 (7)), appointment of members of the management organ (Article 37(2)), voting rights (Article 59 (2)) etc.

At the same time it is foreseen that SCEs can decide in their articles of association to apply the two tier structure of management, even if such a scheme is not regulated in the Member State of the registered office of the SCE. In this case the Member States may adopt the appropriate measures in relation to the SCEs or designate which are the applicable rules.

Furthermore various provisions of the Regulation make direct reference to the national law of public limited-liability companies (e.g. Article 10(1)) that will be applicable mutatis mutandis to SCEs.

Finally it is to be mentioned that Article 8 (2) foresees that if the national law provides for specific rules and/or restrictions related to the nature of business carried out by and SCE or for forms of control by a supervisory authority that law shall apply in full to the SCE.

The Commission is therefore interested in how the Regulation has been implemented in the Member States, and in the rules applying in each Member State to the SCE.

The study shall examine all national legal frameworks implementing the SCE Regulation in EU Member States and EEA countries. It will give a general presentation of the laws, regulations, and other necessary legal or administrative measures (circulars, ministerial decisions, presidential decrees etc), which have been adopted in each country in order to give full
implementation of the Regulation and to allow the creation of European Cooperatives.

The above mapping shall at least include details on:

- How have Member States implemented the articles that provide for an obligation to take measures in order to put into force the SCE Regulation?
- If and how have Member States implemented the options contained in the Regulation and what are the differences between the options chosen for the SCE and the respective national rules applicable to cooperatives?
- Which are the competent authorities designated in accordance with article 78 (2) of the Regulation?
- Any other element concerning measures adopted by a Member State in relation to SCEs

B) Mapping of the national legislations on cooperatives

Background

In February 2004 the Commission has adopted a Communication on the promotion of cooperatives in Europe (COM(2004)18)\(^6\), which reflects the policy objectives for the coming years after the adoption of the SCE Regulation. In this Communication the Commission, amongst other things, notes that the legal forms of cooperatives and provisions concerning the exercise of certain activities in Member States are highly varied.

Although the Regulation on SCE does not seek to harmonise national laws in the area, the Commission understands that some Member States, when implementing the Regulation, have taken advantage of its commonly accepted provisions to draft or rewrite the national laws applying to national cooperatives. Such an exercise may lead to an indirect approximation of national laws.

The aforementioned Communication additionally notes that Member States may have specific rules and/or restrictions related to the nature of business carried out by national cooperatives. This kind of situations, which needs to be revised in accordance with the services directive\(^7\), may create hindrances to the freedom of establishment and freedom to provide services of SCEs and national cooperatives as well.

The Commission is therefore interested to obtain extensive information on all the above subjects and the study shall give a detailed description of:

- the national legislation (Constitution, general and special laws) applying to national cooperatives in each Member State and eventually of existing drafts proposing new legislation. The relevant provisions of national laws should be presented in EN. The study should include a comparative summary table for each country of all the important issues of the rules applicable to cooperatives like methods of creation, external financing instruments available to cooperatives, management, required capital, rights of shares, reserves, returns on profit, protection against demutualisation, cooperative taxation etc.;

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• the specific rules and/or operational, territorial or other restrictions, obligations or obstacles related to the nature of business or to the free exercise of certain activities to be carried out by the ESC and/or national cooperatives, (e.g. insurance activities, participation to public procurements etc) as well as the reasons for such restrictive regulations;

• any other obligations that cooperatives have and which derive from the cooperative nature of the business or from the cooperative principles and values (e.g. investors non members etc.).

Furthermore it is required to explain if and to what extent the adoption of the SCE had an impact on the national legislation, i.e. whether and how the implementation of the European legislation influenced the adoption of amendments to the national law.

C) Inventory of SCEs and related information

In order to reach some conclusions on the success of the use of the SCE instrument by European operators, it is also important to have detailed evidence of the number of SCEs created, their importance, fields of activities etc.

The following information shall at least be provided on each SCE created at the latest 3 months before the delivery of final report:

• the name, objects, address, method of formation and the identity and origin of founders and eventually some details on its subsidiaries and the subscribed capital at the time of formation and consequent variations and the actual net turnover;

• the year it was set up, and if applicable the year(s) it transferred the registered office, and the Member State of the former registered office(s);

• fields of economic activity of the SCE according to the NACE codes (Statistical Classification of Economic Activities in the European Community);

• the board structure (two-tier/one-tier) of the SCEs, and of the founding companies just before the creation of the SCE;

• an indication if the SCE has gone through the negotiation procedure on employee participation in accordance with rules set out in the SCE Directive and how long this procedure lasted and the number of persons employed at the date of creation and the average number of persons employed during the each financial year after creation;

• any further information on SCEs and companies and/or natural persons that have set up SCEs the contractor considers relevant for the study.

D) Analysis of the degree of success of the Regulation

Background

The report foreseen in Article 79 of the ECS Regulation (see point 1.2.1. of the present) should also, if necessary, contain proposals for amendments, aiming at making it more successful and/or at covering new needs. Therefore the Commission is interested in receiving comments as to the effectiveness of the provisions of Council Regulation 1435/2003.
On the basis of the information collected by the Contractor (within representative organisations and/or individual cooperatives), the study shall analyse and identify how the different provisions of the SCE Regulation can or have affected the decisions of companies and/or natural persons to uptake or not of the SCE form, including an analysis of the legal and economic considerations involved. In particular, the following aspects shall be considered:

- the value of the "European" image connected to being an SCE, the possibility for cross-border groups of cooperatives to adopt a simplified management structure, the possibility of transferring the registered office, the modalities of formation of an SCE (e.g. merger) etc.;

- the apparent reduced uniformity of the SCE due to the number of references to national law and to the number of options granted to Member States to set national rules concerning the SCE, the complexity of the text of the Regulation etc;

- any relevant legal issues, including employee participation, and considerations linked to tax and labour regimes shall be identified and be taken into account in this assessment;

- costs and savings associated with setting up, registration and running the SCE compared to a national cooperative, e.g. expert legal advice required and other legal controls and obligations before the registration of a SCE, the approximate time and cost of setting up the required employee participation regimes, the time and the administrative costs associated with checking the legality of the formation of the SCE prior to its registration etc.;

- the main legal, administrative and practical difficulties for cross-border cooperation between cooperatives, which the SCE Regulation has or not successfully addressed;

- any other advantages and disadvantages an SCE can offer, identified during the study through interviews or in any other way.

The main reasons motivating entrepreneurs’ decision to set up or not SCEs shall be grouped into two separate categories: factors with potential positive (persuading) effect and factors with potential negative (dissuasive) effect. Where relevant, the study should analyse also any eventual differences according to countries, sectors of activity (agriculture, banking, workers cooperatives, insurance etc) and/or stakeholder groups (e.g. members, employees, investors, creditors, insured people).

E) Other issues concerning visibility of the cooperatives sector

The European Commission would also like to collect information related to measures adopted at national and regional level that support cooperatives and increase awareness of the co-operative form of business. The study should, for example, make reference to curricula of business studies, courses at secondary and university levels, initiatives to develop management skills for cooperatives’ members etc.
F) Recommendations

The conclusions should include recommendations and possible proposals to amend the Regulation based on the results of the study. It is important to understand if the SCE is considered to be an easy or cumbersome instrument, and if it is or not suitable to meet the expectations of the cooperatives which plan to carry out the reorganisation of their business at a Community scale.

In this section the following points should at least be examined:

- whether the SCE Regulation in the future should provide simpler and stronger rules, and whether references back to national laws should be minimised,

- to what extent the cross border element for the creation of SCEs is still necessary and to what extent allowing other methods of formation of the SCE than those defined in Regulation may promote the establishment of new cooperatives,

- to what extent it is appropriate to allow to an SCE to include in its articles of association rules which deviate from or complete national legislation applied to national cooperatives

The study shall also draw conclusions on the future policy concerning the promotion of cooperatives in Europe. The study should identify and analyse what are the main trends in using the business form of cooperatives in European countries, and in which sectors. The study should also give recommendations, and suggestions as to what needs to be done in the area of cooperatives’ legislation and other policy measures affecting growth and development of cooperatives.

4.1.2. Steering committees

The Contractor will work under the supervision of a Steering Committee presided by the Commission. It will consist of representatives of the Commission. The Commission will organise three meetings of the Steering Committee throughout the performance of the contract. The Chair of the Steering Committee will invite the Contractor and any other person it deems necessary to its meetings. The Contractor shall ensure the participation of his/her representative(s) in these meeting.

The role of these meetings will be to examine the methodologies concerning the activities and tasks described above and to make appropriate adjustments where necessary, as well as to assess the results obtained with respect to the objectives established. The Committee meetings will be held at the Commission’s premises in Brussels. The Commission will draft minutes of these meetings. Any travel expenses incurred by the contractor or its representatives to attend the meetings of the Steering Committee, should be included in the budget estimate provided according to section 2.3.3. (Financial Proposal).

- The kick-off meeting (1st Steering Committee Meeting) will be organised no later than one month after the contract is signed to discuss and adjust the work programme and the precise schedule for the meetings for the duration of the contract.
- No later than six months after the signature of the contract the Commission will organise an **interim meeting** (2\textsuperscript{nd} Steering Committee Meeting) to discuss the interim results of the study.

- No later than 11 months after the signature of the contract the Commission will organise a **final meeting** (3\textsuperscript{rd} Steering Committee Meeting) to discuss the final results of the study.

4.2. **REPORTS AND DOCUMENTS**

The Contractor is to provide the required reports and documents in accordance with the conditions of the standard service contract appended in Annex 5.2.

- All deliverables will be submitted in 2 copies, in paper version and in electronic format compatible with MS Word.
- All deliverables will be submitted in English. Deliverables should be proofread by a qualified native speaker or by a qualified person with a perfect knowledge of English.
- Where information that is not publicly available is provided by other institutions, associations or firms, the accuracy of this information, as expressed in deliverable, will have to be approved by those who have provided it to the Contractor.

The foreseen deliverables are the following:

4.2.1. **Work programme**

Within one month after the signature of the contract, the contractor will have to provide the Commission with a **work programme** including the methodology and time lines foreseen to carry out the different tasks. The work programme will be discussed and agreed with the Commission during the 1\textsuperscript{st} **Steering Committee Meeting** (section 4.1.2).

4.2.2. **Interim report**

The interim report shall be submitted no later than 6 months after the date of signature of the contract by the last of the contracting parties. The document shall include at least the following:

- The description of the work carried out, the provisional results, the current status of the implementation of the work programme, and the difficulties met during the process.
- It should specially inform on the mapping of the legislation applicable in the selected EU/EEA Member States, and the inventory of SCEs and related information.
- It will outline also the structure of the chapter devoted to analysis of the data and identification of the main trends as well as the chapter including the analytical conclusions.

The interim report will be discussed with the Commission during the 2\textsuperscript{nd} **Steering Committee Meeting** (section 4.1.2).
The Commission shall have 20 days from the receipt to approve or reject the interim report.

If the Contractor receives comments from the Commission, the contractor shall have 20 days in which to submit additional information or a new interim report.

4.2.3. **Final study**

The final study shall be submitted no later than 10 months after the date of signature of the contract by the last of the contracting parties.

The final report will be discussed with the Commission during the 3rd Steering Committee Meeting (section 4.1.2).

The study will contain all the findings of the tasks carried out and will include an executive summary not exceeding 8 pages.

The presentation of the results should include analytical tables, graphs, etc. of the data collected.

In addition, the inventory of SCEs should be also provided to the Commission in an electronic format compatible with MS Excel, from which further analysis can be easily made.

The Commission shall have 45 days from the receipt to approve or reject the final study.

If the Contractor receives comments from the Commission, the contractor shall have 45 days in which to submit additional information or a new final study.

Should the Commission still not consider the final study acceptable, the Contractor will be invited to amend it until the Commission is satisfied. In this case, the corresponding liquidated damages will be applicable, following the provisions of Article II.16 of the Contract.
<table>
<thead>
<tr>
<th>Time-line</th>
<th>Meetings</th>
<th>Reports</th>
<th>Approval of reports</th>
<th>Payments</th>
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<tbody>
<tr>
<td>Contract signature</td>
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<tr>
<td>1 month</td>
<td>1\textsuperscript{st} Steering Committee</td>
<td>Work programme</td>
<td>Approval</td>
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<td>6 months</td>
<td>2\textsuperscript{nd} Steering Committee</td>
<td>Interim report</td>
<td>Approval</td>
<td></td>
</tr>
<tr>
<td>7 months</td>
<td></td>
<td></td>
<td></td>
<td>Interim payment 40%</td>
</tr>
<tr>
<td>8 months</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>9 months</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>10 months</td>
<td></td>
<td></td>
<td></td>
<td>Final study</td>
</tr>
<tr>
<td>11 months</td>
<td>3\textsuperscript{rd} Steering Committee</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>12 months</td>
<td></td>
<td></td>
<td>Approval</td>
<td>Payment of Balance</td>
</tr>
</tbody>
</table>
5.1. EXCLUSION CRITERIA FORM (INVITATION TO TENDER NO ENTR/2009/021)

Exclusion Criteria Form

The undersigned [name of the signatory of this form, to be completed]:

- in his/her own name (if the economic operator is a natural person or in case of own declaration of a director or person with powers of representation, decision making or control over the economic operator⁸)
  or
- representing (if the economic operator is a legal person)

official name in full (only for legal person):
official legal form (only for legal person):
official address in full:
VAT registration number:

declares that the company or organisation that he/she represents / he/she:

a) is not bankrupt or being wound up, is not having its affairs administered by the courts, has not entered into an arrangement with creditors, has not suspended business activities, is not the subject of proceedings concerning those matters, and is not in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
b) has not been convicted of an offence concerning professional conduct by a judgment which has the force of res judicata;
c) has not been guilty of grave professional misconduct proven by any means which the contracting authorities can justify;
d) has fulfilled all its obligations relating to the payment of social security contributions and the payment of taxes in accordance with the legal provisions of the country in which it is established, with those of the country of the contracting authority and those of the country where the contract is to be carried out;
e) has not been the subject of a judgement which has the force of res judicata for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities’ financial interests;
f) is not a subject of the administrative penalty for being guilty of misrepresentation in supplying the information required by the contracting authority as a condition of participation in the procurement procedure or failing to supply an information, or being declared to be in serious breach of his obligation under contract covered by the budget.

In addition, the undersigned declares on their honour:

⁸ To be used depending on the national legislation of the country in which the candidate or tenderer is established and where considered necessary by the contracting authority (see Art. 134(4) of the Implementing Rules).
g) they have no conflict of interest in connection with the contract; a conflict of interest could arise in particular as a result of economic interests, political or national affinities, family or emotional ties or any other relevant connection or shared interest;

h) they will inform the contracting authority, without delay, of any situation considered a conflict of interest or which could give rise to a conflict of interest;

i) they have not made and will not make any offer of any type whatsoever from which an advantage can be derived under the contract;

j) they have not granted and will not grant, have not sought and will not seek, have not attempted and will not attempt to obtain, and have not accepted and will not accept any advantage, financial or in kind, to or from any party whatsoever, constituting an illegal practice or involving corruption, either directly or indirectly, as an incentive or reward relating to award of the contract.

k) that the information provided to the Commission within the context of this invitation to tender is accurate, sincere and complete.

l) that in case of award of contract, they shall provide the evidence that they are not in any of the situations described in points a, b, d, e above.

For situations described in (a), (b) and (e), production of a recent extract from the judicial record is required or, failing that, a recent equivalent document issued by a judicial or administrative authority in the country of origin or provenance showing that those requirements are satisfied. Where the Tenderer is a legal person and the national legislation of the country in which the Tenderer is established does not allow the provision of such documents for legal persons, the documents should be provided for natural persons, such as the company directors or any person with powers of representation, decision making or control in relation to the Tenderer.

For the situation described in point (d) above, recent certificates or letters issued by the competent authorities of the State concerned are required. These documents must provide evidence covering all taxes and social security contributions for which the Tenderer is liable, including for example, VAT, income tax (natural persons only), company tax (legal persons only) and social security contributions.

For any of the situations (a), (b), (d) or (e), where any document described in two paragraphs above is not issued in the country concerned, it may be replaced by a sworn or, failing that, a solemn statement made by the interested party before a judicial or administrative authority, a notary or a qualified professional body in his country of origin or provenance.

By signing this form, the undersigned acknowledges that they have been acquainted with the administrative and financial penalties described under Art. 133 and 134 b of the Implementing Rules (Commission Regulation 2342/2002 of 23/12/02), which may be applied if any of the declarations or information provided prove to be false.

Full name  Date  Signature

---

9 Mandatory for contracts of value above €133 000 only (see art. 134(2) of the Implementing Rules). The contracting authority can nevertheless request such evidence for contracts with a lower value.
5.2. **Draft Service Contract**

*(See separate document published with these Tender Specifications).*
5.3. MODEL GUARANTEE

Model
Contract performance guarantee

Bank (Letterhead)
[Place/Date]

European Community
Represented by the European Commission
Directorate-General Enterprise and Industry
Unit E 3 Crafts, small businesses, cooperatives and mutuals
1049 Brussels - Belgium

Contract performance guarantee No …
[Subject/Brief description of contract]

We hereby confirm that we give the European Community an unconditional and irrevocable joint and several guarantee for an unlimited period to the value of

EUR […] (in words: … euro)

for performance of the contract concluded between the European Community and
[Firm/Name/Address – as given in the contract (No/exact title – hereinafter “the contract”)]
(hereinafter “the Contractor”).

If the Commission gives notice that the Contractor has for any reason failed to fulfil his obligations under the contract by the due date, the Bank, acting on behalf of the Contractor, undertakes to pay up to the above amount into a bank account designated by the Commission immediately on receipt of a first written request from the Commission (sent by registered post, with acknowledgement of receipt).

The Bank waives the right to require exhaustion of remedies against the principal, any right to withhold performance, any right of retention, any right of avoidance, any right to offset, and the right to assert any other claims which the Contractor may have against the Commission under the contract or in connection with it or on any other grounds.

The Bank may be released from this guarantee only with the Commission’s written consent and does not have the right of deposit without its consent.

The Bank’s obligations under this guarantee are not affected by any arrangements or agreements made by the Commission with the Contractor which may concern his obligations under the contract.

This guarantee shall take immediate effect. It shall expire on return of this document, which must occur within [30] days after the final payment under the contract has been made.

This guarantee is governed by the law applicable to the contract.

The courts having jurisdiction for matters relating to the contract shall have sole jurisdiction in respect of matters relating to this guarantee.

[Place/Date]

[Signature/Function]      [Signature/Function]
5.4. FINANCIAL AND ECONOMIC CAPACITY OVERVIEW FORM (INVITATION TO TENDER No ENTR/2009/021)

Financial and Economic Capacity Overview

<table>
<thead>
<tr>
<th>Currency: EURO</th>
<th>Figures ($000)</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th></th>
<th>N* (most recent figures available)</th>
<th>N-1</th>
<th>N-2</th>
</tr>
</thead>
</table>

**Total Balance Sheet**

**TRADE DEBTORS**  
*Amounts due by commercial customers*

**CAPITAL and RESERVES (Equity)**  
*Amounts owned by the company*

**TRADE CREDITORS**  
*Amounts due to commercial suppliers*

**SHORT TERM DEBT**

**LONG TERM DEBT**

**LIQUIDITY**  
*Bank accounts, cash at hand*

**About PROFIT & LOSS**

**TURNOVER**

**ORDINARY RESULT**

**EXTRAORDINARY RESULT**

**INCOME TAX**

**NET RESULT**

You may add any data that you would consider of vital relevance for your organisation and for the understanding of the above figures.

Comments: Please explain BRIEFLY important variations from one year to another if appropriate. In case of negative equity or repeated losses, please explain how the future of the organisation will be ensured.
5.5. Subcontractor / Letter of Intent ENTR/2009/021

Study on the implementation of the Regulation 1435/2003 on the Statute for European Cooperative Society (SCE)

The undersigned: ..............................................................................................................

Name of the company/organisation: ..............................................................................

Address: .........................................................................................................................

 Declares hereby the intention to collaborate in the execution of the tasks subject to the above call for tender, in accordance with the terms of the offer to which the present form is annexed, if the contract is awarded to … … (name of the tenderer).

 Declares hereby accepting the general conditions attached to the tendering specifications for this call for tender, and in particular Article II.17 in relation with checks and audits.

Full name Date Signature
...........................................................................................................................................
5.6. POWER OF ATTORNEY

5.6.1. POWER OF ATTORNEY – MODEL 1

Agreement / Power of Attorney

(DESIGNATING ONE OF THE COMPANIES OF THE GROUP AS LEADER AND GIVING A MANDATE TO IT)

We the undersigned:

– Signatory 1 (Name, Function, Company, Registered address, VAT Number)
– Signatory 2 (Name, Function, Company, Registered address, VAT Number)
– ..... 
– Signatory N (Name, Function, Company, Registered address, VAT Number),

Each of them having the legal capacity required to act on behalf of his/her company, HEREBY AGREE AS FOLLOWS:

In case the European Commission awards Contract .... (« the Contract ») to Company 1, Company 2, ..., Company N (« the Group Members »), based on the joint offer submitted by them on ... ..... for the supply of ..... and/or the provision of services for ... (« the Supplies and/or the Services »).

(1) As co-signatories of the Contract, all the Group Members:

(a) Shall be jointly and severally liable towards the European Commission for the performance of the Contract.
(b) Shall comply with the terms and conditions of the Contract and ensure the proper execution of their respective share of the Supplies and/or the Services.

(2) To this effect, the Group Members designate Company X as Group Leader. [N.B.: The Group Leader has to be one of the Group Members]

(3) Payments by the European Commission related to the Supplies or the Services shall be made through the Group Leader’s bank account. [Provide details on bank, address, account number, etc.].

(4) The Group Members grant to the Group Leader all the necessary powers to act on their behalf in connection with the Supplies and/or the Services. This mandate involves in particular the following tasks:

(a) The Group Leader shall sign any contractual documents —including the Contract, and Amendments thereto— and issue any invoices related to the Supplies or the Services on behalf of the Group Members.
(b) The Group Leader shall act as single point of contact for the European Commission in connection with the Supplies and/or the Services to be provided under the Contract. It shall co-ordinate the provision of the Supplies and/or the Services by the Group Members to the European Commission, and shall see to a proper administration of the Contract.
Any modification to the present agreement / power of attorney shall be subject to the European Commission’s express approval.

This agreement / power of attorney shall expire when all the contractual obligations of the Group Members towards the European Commission in connection with the Supplies and/or the Services to be provided under the Contract have ceased to exist. The parties cannot terminate it before that date without the Commission’s consent.

Signed in .......... on ........... ........
Name
Function
Company

Name
Function
Company

Name
Function
Company

Name
Function
Company
5.6.2. **POWER OF ATTORNEY – MODEL 2**

**Agreement / Power of Attorney**

*(Creating the Group as separate entity, appointing a Group Manager and giving a mandate to him/her)*

We the undersigned:

– Signatory 1 (Name, Function, Company, Registered address, VAT Number)
– Signatory 2 (Name, Function, Company, Registered address, VAT Number)
–  
– Signatory N (Name, Function, Company, Registered address, VAT Number),

Each of them having the legal capacity required to act on behalf of his/her company, HEREBY AGREE AS FOLLOWS:

In case the European Commission awards Contract …. (« the Contract ») to Company 1, Company 2, …, Company N (« the Group Members »), based on the joint offer submitted by them on … ….. for the supply of …… and/or the provision of services for … (« the Supplies and/or the Services »).

(1) As co-signatories of the Contract, all the Group Members:
   (a) Shall be jointly and severally liable towards the European Commission for the performance of the Contract.
   (b) Shall comply with the terms and conditions of the Contract and ensure the proper execution of their respective share of the Supplies and/or the Services.

(2) To this effect, the Group Members have set up under the laws of ……. the Group …. (« the Group »). The Group has the legal form of a ……. [Provide details on registration of the Group: VAT Number, Trade Register, etc.].

(3) Payments by the European Commission related to the Supplies or the Services shall be made through the Group’s bank account. [Provide details on bank, address, account number, etc.].

(4) The Group Members appoint Mr/Ms ……. as Group Manager.

(5) The Group Members grant to the Group Manager all the necessary powers to act alone on their behalf in connection with the Supplies and/or the Services. This mandate involves in particular the following tasks:

   (a) The Group Manager shall sign any contractual documents —including the Contract and Amendments thereto — and issue any invoices related to the Supplies or the Services on behalf of the Group Members.

   (b) The Group Manager shall act as single point of contact for the European Commission in connection with the Supplies and/or the Services to be provided under the Contract. He/she shall co-ordinate the provision of the Supplies and/or the Services by the Group Members to the European Commission, and shall see to a proper administration of the Contract.
Any modification to the present agreement / power of attorney shall be subject to the European Commission’s express approval.

This agreement / power of attorney shall expire when all the contractual obligations of the Group Members towards the European Commission in connection with the Supplies and/or the Services to be provided under the Contract have ceased to exist. The parties cannot terminate it before that date without the Commission’s consent.

Signed in .......... on ............... ........
Name
Function
Company

Name
Function
Company

Name
Function
Company

Name
Function
Company
5.7. CHECKLIST OF DOCUMENTS TO BE SUBMITTED

The purpose of the table below is to facilitate the preparation of the tender by providing an overview of the documents that must be included (marked by ■) depending on the role of each economic operator in the tender (coordinator/group leader in joint bid, partner in joint bid, single contractor, main contractor, subcontractor).

Some of the documents are only relevant in cases of joint bids or when subcontractors are involved. Additional documents might be necessary depending on the specific characteristics of each tender.

<table>
<thead>
<tr>
<th>Description</th>
<th>Section</th>
<th>Coordinator or group leader in joint bid</th>
<th>All partners in joint bid</th>
<th>Single or Main contractor</th>
<th>Subcontractor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Power of attorney of partners in joint bid indicating the group leader (see annex 5.6)</td>
<td>1</td>
<td>■</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Letter of intent of subcontractor (see annex 5.5)</td>
<td>1</td>
<td>■</td>
<td></td>
<td>■</td>
<td></td>
</tr>
<tr>
<td>Legal Entity Form (see section 2.3.1)</td>
<td>1</td>
<td>■</td>
<td>■</td>
<td>■</td>
<td>■</td>
</tr>
<tr>
<td>Download the form from: <a href="http://ec.europa.eu/budget/execution/legal_entities_en.htm">http://ec.europa.eu/budget/execution/legal_entities_en.htm</a></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Supporting documents for the Legal Entity File Form</td>
<td>1</td>
<td>■</td>
<td>■</td>
<td>■</td>
<td></td>
</tr>
<tr>
<td>Financial Identification form (see section 2.3.1)</td>
<td>1</td>
<td>■</td>
<td>■</td>
<td>■</td>
<td></td>
</tr>
<tr>
<td>Download the form from: <a href="http://europa.eu/comm/budget/execution/fliers_en.htm">http://europa.eu/comm/budget/execution/fliers_en.htm</a></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Exclusion Criteria form (see section 3.1 and annex 5.1)</td>
<td>2</td>
<td>■</td>
<td>■</td>
<td>■</td>
<td>■</td>
</tr>
<tr>
<td>Evidence of Economic and financial capacity (see section 3.2.2 and annex 5.4)</td>
<td>3</td>
<td>■</td>
<td>■</td>
<td>■</td>
<td></td>
</tr>
<tr>
<td>Evidence of Technical and professional capacity (see section 3.2.3)</td>
<td>3</td>
<td>■</td>
<td>■</td>
<td>■</td>
<td></td>
</tr>
<tr>
<td>Go to the following page to fill in the CV: <a href="http://europass.cedefop.europa.eu/europass/preview.action?locale_id=1">http://europass.cedefop.europa.eu/europass/preview.action?locale_id=1</a></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The following sections must be provided in the bid, their absence would mean rejection of the bid for incompleteness:

<table>
<thead>
<tr>
<th>Description</th>
<th>Section</th>
<th>Coordinator or single tenderer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Technical Proposal (see section 2.3.2 and 4)</td>
<td>4</td>
<td>■</td>
</tr>
<tr>
<td>Financial Proposal (see section 2.3.3)</td>
<td>5</td>
<td>■</td>
</tr>
</tbody>
</table>
5.8. **ADDITIONAL INFORMATION**

This annex includes an indicative (non-exhaustive) list of relevant information and useful documents.
### Reference to law of Member State which applies to public limited-liability companies

<table>
<thead>
<tr>
<th>Article 4 (Capital of the SCE)</th>
</tr>
</thead>
<tbody>
<tr>
<td>6. The law applicable to public limited-liability companies in the Member State where the SCE has its registered office, concerning the appointment of experts and the valuation of any consideration other than cash, shall apply by analogy to the SCE.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Article 5 (Statutes)</th>
</tr>
</thead>
<tbody>
<tr>
<td>3. The law for the precautionary supervision applicable in the Member State in which the SCE has its registered office to public limited-liability companies during the phase of the constitution shall apply by analogy to the control of the constitution of the SCE.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Article 10 (Particulars to be stated in the documents)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. The law applicable, in the Member State where the SCE has its registered office, to public limited-liability companies regulating the content of the letters and documents sent to third parties shall apply by analogy to that SCE. The name of the SCE shall be preceded or followed by the abbreviation &quot;SCE&quot; and, where appropriate, by the word &quot;limited&quot;.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Article 11 (Registration and disclosure requirements)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Every SCE shall be registered in the Member State in which it has its registered office in a register designated by the law of that Member State in accordance with the law applicable to public limited-liability companies.</td>
</tr>
<tr>
<td>5. The law applicable, in the Member State where the SCE has its registered office, to public limited-liability companies concerning disclosure requirements of documents and particulars shall apply by analogy to that SCE.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Article 12 (Publication of documents in the Member States)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Publication of documents and particulars concerning an SCE which must be made public under this Regulation shall be effected in the manner laid down in the laws of the Member State applicable to public limited-liability companies in which the SCE has its registered office.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Article 20 (Law applicable in the case of merger)</th>
</tr>
</thead>
<tbody>
<tr>
<td>For matters not covered by this section or, where a matter is partly covered by it, for aspects not covered by it, each cooperative involved in the formation of an SCE by merger shall be governed by the provisions of the law of the Member State to which it is subject that apply to mergers of cooperatives and, failing that, the provisions applicable to internal mergers of public limited-liability companies under the law of that State.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Article 22 (Conditions of merger)</th>
</tr>
</thead>
<tbody>
<tr>
<td>3. The law applicable to public limited-liability companies concerning the draft terms of a merger shall apply by analogy to the cross-border merger of cooperatives for the creation of an SCE.</td>
</tr>
<tr>
<td>Article 24 (Publication)</td>
</tr>
<tr>
<td>Article 26 (Report of independent experts)</td>
</tr>
<tr>
<td>Article 28 (Laws applicable to formation by merger)</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>Article 29 (Scrutiny of merger procedure)</td>
</tr>
<tr>
<td>Article 32 (Publication)</td>
</tr>
<tr>
<td>Article 49 (Confidentiality)</td>
</tr>
</tbody>
</table>
Law applicable

An SCE shall be governed in the case of matters not regulated by the Regulation or, where matters are partly regulated by it, of those aspects not covered by it, by

<table>
<thead>
<tr>
<th>The laws adopted by Member States in the implementation of Community measures relating specifically to SCEs</th>
<th>The laws of Member States which would apply to a cooperative formed in accordance with the law of the Member State in which the SCE has its registered office (law of Member States applicable to PLCs)</th>
</tr>
</thead>
</table>

**Article 2 (Formation):** A Member State may provide that a legal body the head office of which is not in the Community may participate in the formation of an SCE provided that legal body is formed under the law of a Member State, has its registered office in that Member State and has a real and continuous link with a Member State's economy

**Article 3 (Minimum capital):** The laws of the Member State requiring a greater subscribed capital for legal bodies carrying on certain types of activity shall apply to SCEs with registered offices in that Member State

**Article 4 (Capital of the SCE):** The law applicable to public limited-liability companies in the Member State where the SCE has its registered office, concerning the appointment of experts and the valuation of any consideration other than cash, shall apply by analogy to the SCE

**Article 5 (Statutes):** The law for the precautionary supervision applicable in the Member State in which the SCE has its registered office to public limited-liability companies during the phase of the constitution shall apply by analogy to the control of the constitution of the SCE

**Article 6 (Registered office):** The registered office of an SCE shall be located within the Community, in the same Member State as its head office. A Member State may, in addition, impose on SCEs registered in its territory the obligation of locating the head office and the registered office in the same place

**Article 7 (Transfer of registered office):** The management or administrative organ shall draw up a transfer proposal and publicise it in accordance with Article 12, without prejudice to any additional forms of publication provided for by the Member State of the registered office

7. Before the competent authority issues the certificate mentioned in paragraph 8, the SCE shall satisfy it that, in respect of any liabilities arising prior to the publication of the transfer proposal, the interests of creditors and holders of other rights in respect of the SCE (including those of public bodies) have been adequately protected in accordance with requirements laid down by the Member State where the SCE has its registered office prior to the transfer.

A Member State may extend the application of the first subparagraph to liabilities that arise, or may arise, prior to the transfer.
**Article 10 (Particulars to be stated in the documents)** The law applicable, in the Member State where the SCE has its registered office, to public limited-liability companies regulating the content of the letters and documents sent to third parties shall apply by analogy to that SCE. The name of the SCE shall be preceded or followed by the abbreviation "SCE" and, where appropriate, by the word "limited".

**Article 11 (Registration and disclosure requirements)** Every SCE shall be registered in the Member State in which it has its registered office in a register designated by the law of that Member State in accordance with the law applicable to public limited-liability companies.

5. The law applicable, in the Member State where the SCE has its registered office, to public limited-liability companies concerning disclosure requirements of documents and particulars shall apply by analogy to that SCE.
The Law applicable to the ECS
article 8 of the Regulation

1. Article 8 of the Regulation establishes a rather complex hierarchy of laws applicable to the functioning and operations of the ECS. However this provision on hierarchy of laws is not new. It is also found in the EEIG Regulation and it is the rule in the European Company.

2. For all purposes, this hierarchy is represented, as follows:

3. **The primacy of the Regulation.** The Regulation contains in principle three categories of rules.

3.1. **Genuine specific new rules applicable to ECS,** e.g. the provisions (article 1§2, 3§2 and 4§1) which foresee that there will be a minimum subscribed capital divided into shares, while there are legislations in MS which do not require a capital (NL) for a cooperatives

3.2. **The references to the law applicable to public limited companies** e.g. (art.4§6 on the appointment of experts to evaluate the assets of a company)

3.3. **The references to the law applicable to cooperatives** e.g. of the law applicable during formation is the national cooperative legislation. (art. 17§1 and 5§1 on the instrument of incorporation, or statutes, articles of association, memorandum, by laws etc)

4. **Second it is the statutes or articles of association of the ECS if this is authorised by the regulation;** e.g. the statutes lay down the procedures and conditions for a member to exercise his right to resign. This provision gives to the members of a ECS a considerable freedom and space to lay down norms for certain issues. The best example is the structure of the boards of the directors (art. 36) where ECS can choose between the one tier system or two tier system, which may be contrary to the national legislation.

5. **Third we have the laws that MS adopt in order to regulate some issues specifically related to the SCE, when they proceed to the implementation of the Regulation.** The text contains a series of provisions which foresee that “MS may provide that, or may stipulate or may require etc.” e.g. (article 39) a MS may fix the number of members of the supervisory body in a ECS. The freedom of the national legislators in these areas is considerable and it is advisable that the national cooperatives federations examine the cases in question in order to be able to see with the authorities what suits an ECS best according to national traditions.

6. **Fourth in the hierarchy is the national cooperative legislation or customary applied law for matters not regulated otherwise.

7. And at the very **end are the statutes or articles of association,** which may regulate an issue, if this is equally possible for the national cooperatives.

8. Final remark: notwithstanding the fact that the Regulation contains a full set of rules on the incorporation and operation of the ESC, a lot of issues and matters will be regulated in a different way from one MS to the other. This is due to the big number of references to the national law of cooperatives, an area in which there is no harmonisation so far, as is in the contrary the case for the public companies limited by shares. From this point of view it is possible to experience in Europe a situation of forum shopping.
OBLIGATIONS

SUBJECT MATTERS FOR WHICH MEMBER STATES HAVE TO TAKE MEASURES IN ORDER TO IMPLEMENT REGULATION 1453/2003.

Article 4.
Capital of the SCE

6. The law applicable to public limited liability companies in the MS where the SCE has its registered office concerning the appointment of experts and the valuation of any consideration other than cash, shall apply by analogy to the SCE.

**MS should provide an extension of the regime applied to public limited-liability companies for the control of the consideration in kind to the SCE.**

Article 7
Transfer of registered office

8. In the Member State in which the SCE has its registered office, the court, notary or other competent authority shall issue a certificate attesting to the completion of the acts and formalities to be accomplished before the transfer.

The authority would be the one which is in charge with the merger control, as stated in the Third Council Directive 78/855/EEC of 9 October 1978 concerning mergers of public limited-liability companies.

Article 11
Registration and disclosure requirements

1. Every SCE shall be registered in the Member State in which it has its registered office in a register designated by the law of that Member State in accordance with the law applicable to public limited-liability companies.

The SCEs should be registered in the same register as public limited-liability companies or the European Company. In addition depending on their objectives co-operatives may be asked to registered into specific registers, provided for by special regimes (banking activities, insurance activities, etc.)

Article 26
Report of independent experts for the merger

1. For each merging cooperative one or more independent experts appointed by that cooperative in accordance with the provisions of article 4§6 shall examine the draft terms of merger and draw up a written report for the members.

These are the same experts as in Article 4, §6 who examine the share exchange ratio

Article 29
Scrutiny of merger procedure

2. In each Member State concerned the court, notary or other competent authority shall issue a certificate attesting to the completion of the pre-merger acts and formalities.

- The authority shall be the same as the one in Article 7

Article 30
Scrutiny of legality of merger

1. The legality of a merger shall be scrutinised, as regards the part of the procedure concerning the completion of the merger and the formation of the SCE, by the court, notary or other competent authority in the Member State of the proposed registered office of the SCE able to
scrutinise that aspect of the legality of mergers of cooperatives and, failing that, mergers of public limited-liability companies.

- The authority shall be the same as the one in article 7 and 29 (see above)

Article 35
Procedures for formation by conversion

5. Before the general meeting referred to in paragraph 6, one or more independent experts appointed or approved, in accordance with the national provisions, by a judicial or administrative authority in the Member State to which the cooperative being converted into an SCE is subject shall certify mutatis mutandis that the rules of Article 22(1)(b) are respected.

- See article 4§6

Article 70
Auditing

The statutory audit of an SCE's annual accounts and its consolidated accounts if any shall be carried out by one or more persons authorised to do so in the Member State in which the SCE has its registered office in accordance with the measures adopted in that State pursuant to Directives 84/253/EEC and 89/48/EEC.

- The regime applying for the auditing of all commercial companies should be expanded to the SCE.

Article 73
Winding-up

1. On an application by any person with a legitimate interest or any competent authority, the court or any competent administrative authority of the Member State where the SCE has its registered office shall order the SCE to be wound up where it finds that there has been a breach of Article 2(1) and/or Article 3(2) and in the cases covered by Article 34.

The court or the competent administrative authority may allow the SCE time to rectify the situation. If it fails to do so within the time allowed, the court or the competent administrative authority shall order it to be wound up.

This paragraph is new compared to the SE Regulation

2. When an SCE no longer complies with the requirement laid down in Article 6, the Member State in which the SCE's registered office is situated shall take appropriate measures to oblige the SCE to regularise its situation within a specified period either:
   - by re-establishing its head office in the Member State in which its registered office is situated, or
   - by transferring the registered office by means of the procedure laid down in Article 7.

3. The Member State in which the SCE’s registered office is situated shall put in place the measures necessary to ensure that an SCE which fails to regularise its positioning accordance with paragraph 2 is liquidated

4. The Member State in which the SCE's registered office is situated shall seek (please read SET UP!) judicial or other appropriate remedy with regard to any established infringement of Article 6. That remedy shall have suspensory effect on the procedures laid down in paragraphs 2 and 3.

5. Where it is established on the initiative of either the authorities or any interested party that an SCE has its head office within the territory of a Member State in breach of Article 6, the authorities of that Member State shall immediately inform the Member State in which the SCE’s registered office is situated.

- The above four paragraphs are the same as these of the SE Regulation. In our view the same procedure as for the SE should apply.

Article 76
Conversion into a cooperative

5. Before the general meeting referred to in paragraph 6, one or more independent experts appointed or approved, in accordance with the national provisions, by a judicial or administrative
authority in the Member State to which the SCE being converted into a cooperative is subject, shall certify that the latter has assets at least equivalent to its capital.

See article 4§6

Article 78
National implementing rules

1. Member States shall make such provision as is appropriate to ensure the effective application of this Regulation.

2. Each Member State shall designate the competent authorities within the meaning of Articles 7, 21, 29, 30, 54 and 73. It shall inform the Commission and the other Member States accordingly.

See above
Registered office
and transfer of the registered office

1. The Regulation foresees that the registered office (or in French le siege social) of an SCE has to be located within the Community, in the same Member State as its head office, according to the principle that the place of incorporation (or registered office) and the “main administration” should coincide.

2. In addition the Regulation allows MS to require from SCEs established in their territory to locate the head office (or main administration) and the registered office in the same place, i.e. the same address.

3. The Regulation, following the example of the EEIG and of the EC Regulations allows the transfer of registered office+administration from one MS to another MS. This implies that there will be a change to the “nationality” of the company. Such transfer shall not result however in the winding-up of the SCE or in the creation of a new legal person.

4. In broad terms the procedure is very similar to the one followed in the cases of merger and conversion. There will be a proposal from the board of directors and a report explaining and justifying the legal and economic reasons for the transfer. The proposal is published, and the general meeting decides. In addition there is the indispensable control of the whole procedure by a public authority.

5. The Regulation provides as well that any member who opposed the transfer decision at the general meeting may submit his resignation, which entitles him to repayment of shares.

6. The Regulation lays down also a provision concerning the protection of creditors, which is rather “exceptional” in the sense that a similar rule has not been foreseen in the case of mergers. It is laid down that, like in the merger, the public authority which controls the respect of the whole procedure will not give its green light unless the ECS proves that, in respect of any liabilities arising prior to the publication of the transfer proposal, the interests of creditors have been adequately protected. And it goes on by saying that: “A Member State may extend the application of this rule to liabilities that may arise, after the publication of the proposal but prior to the transfer”. In addition, the text allows MS to apply rules concerning the securing of payments to public bodies, which may be more protective than those meant to protect private parties.

7. In principle there are two main categories of national regimes concerning the protection of creditors in respect of claims, which proceed the publication of the proposal of a merger or of the transfer and have not fallen due at the time of such publication.

- Firstly the regimes in which creditors have a mere right of opposition, but cannot prevent the merger or the transfer from taking effect. In that case, a judge can decide to grant to creditors a supplementary safeguard or to order the anticipated payment of debt if the financial situation of the company makes it necessary.

- Pursuant to the second regime a procedure is established according to which creditors have the right to block a merger from taking effect until the objections are withdrawn or until a judge considers them to be unfounded.

8. This second regime may therefore be applied by all MS in cases of debts (like taxes) to public bodies.

9. In addition like in the case of mergers a MS may provide that the transfer of a registered office, because it would result in a change of the law applicable shall not take effect if any of that Member State’s competent authorities opposes it. Such opposition may be based only on grounds of public interest.

10. The regulation, in an effort to offer complete protection to creditors, interferes also with matters of civil procedure. It is foreseen that an SCE which has transferred its registered office to another Member State shall be considered, in respect of any course of action arising prior to the transfer, as having its registered office in the Member State where the SCE was registered prior to the transfer, even if the SCE is sued after the transfer.
### Tableau 1 : Les articles faisant référence à la législation nationale

**Source:** Cooperatives Europe - Common platform of a reinforced cooperation between the ICA-Europe and the CCACE - [http://www.coopseurope.coop/](http://www.coopseurope.coop/)

<table>
<thead>
<tr>
<th>Articles(^{11})</th>
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<tr>
<td><strong>CHAPITRE I</strong></td>
<td>DISPOSITIONS GÉNÉRALES</td>
<td><strong>CHAPTER I</strong></td>
</tr>
</tbody>
</table>

#### Article 2
**Constitution**
**Formation**

1. La SEC peut être constituée comme suit:
   - par au moins cinq personnes physiques résidant dans au moins deux États membres,
   - par au moins cinq personnes physiques et sociétés au sens de l'article 48, deuxième alinéa, du traité, ainsi que d'autres entités juridiques de droit public ou privé, constituées selon le droit d'un État membre, qui résident dans au moins deux États membres ou sont régies par la législation d'au moins deux États membres,
   - par des sociétés au sens de l'article 48, deuxième alinéa, du traité, ainsi que d'autres entités juridiques de droit public ou privé, constituées selon le droit d'un État membre, qui résident dans au moins deux États membres ou sont régies par la législation d'au moins deux États membres,
   - par fusion de coopératives constituées selon le droit d'un État membre et ayant leur siège statutaire et leur administration centrale dans la Communauté, si deux d'entre elles au moins relèvent du droit d'États membres différents,
   - par transformation d'une coopérative constituée selon le droit d'un État membre et ayant son siège statutaire et son administration centrale dans la Communauté, si elle a depuis au moins deux ans un établissement ou une filiale relevant du droit d'un autre État membre.

2. Un État membre peut prévoir qu'une entité juridique n'ayant pas son administration centrale dans la Communauté peut participer à la constitution d'une SEC, si elle est constituée selon le droit d'un État membre, a son siège statutaire dans ce même État membre et a un lien effectif et continu avec l'économie d'un État membre.

1. An SCE may be formed as follows:
   - by five or more natural persons resident in at least two Member States,
   - by five or more natural persons and companies and firms within the meaning of the second paragraph of Article 48 of the Treaty and other legal bodies governed by public or private law, formed under the law of a Member State, resident in, or governed by the law of, at least two different Member States,
   - by companies and firms within the meaning of the second paragraph of Article 48 of the Treaty and other legal bodies governed by public or private law formed under the law of a Member State which are governed by the law of at least two different Member States,
   - by a merger between cooperatives formed under the law of a Member State with registered offices and head offices within the Community, provided that at least two of them are governed by the law of different Member States,
   - by conversion of a cooperative formed under the law of a Member State, which has its registered office and head office within the Community if for at least two years

2. A Member State may provide that a legal body the head office of which is not in the Community may participate in the formation of an SCE provided that legal body is formed under the law of a Member State, has its registered office in that Member State and has a real and continuous link with a Member State's economy.

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\(^{10}\) Les parties soulignées sont celles pour lesquelles les états doivent forcément compléter leur législation, car il s'agit des dispositions spécifiques pour la SCE.

\(^{11}\) Les numéros des paragraphes sont indiqués à côté du texte.
| Article 3 | Capital minimal  
Minimum capital | 3. La législation d'un État membre prévoyant un capital souscrit plus élevé pour les entités juridiques exerçant certains types d'activités s'applique aux SEC ayant leur siège statutaire dans cet État membre. | 3. The laws of the Member State requiring a greater subscribed capital for legal bodies carrying on certain types of activity shall apply to SCEs with registered offices in that Member State. |
| Article 4 | Capital de la SEC  
Capital of the SCE | 6. Le droit applicable aux sociétés anonymes, dans l'État membre où la SEC a son siège statutaire, en ce qui concerne la désignation d'experts et l'évaluation des apports autres qu'en numéraire s'applique par analogie à la SEC. | 6. The law applicable to public limited-liability companies in the Member State where the SCE has its registered office, concerning the appointment of experts and the valuation of any consideration other than cash, shall apply by analogy to the SCE. |
| Article 5 | Statuts  
Statutes | 3. Le droit applicable, dans l'État membre où la SEC a son siège statutaire, aux fins du contrôle préventif d'une société anonyme pendant la phase de constitution s'applique par analogie au contrôle de la constitution de la SEC. | 3. The law for the precautionary supervision applicable in the Member State in which the SCE has its registered office to public limited-liability companies during the phase of the constitution shall apply by analogy to the control of the constitution of the SCE. |
| Article 6 | Siège statutaire  
Registered office | Le siège statutaire de la SEC est situé à l'intérieur de la Communauté, dans le même État membre que son administration centrale. Un État membre peut, en outre, imposer aux SEC immatriculées sur son territoire l'obligation d'avoir leur administration centrale et leur siège statutaire au même endroit. | The registered office of an SCE shall be located within the Community, in the same Member State as its head office. A Member State may, in addition, impose on SCEs registered in its territory the obligation of locating the head office and the registered office in the same place. |
| Article 7 | Transfert du siège statutaire  
Transfer of registered office | 2. Un projet de transfert est établi par l'organe de direction ou d'administration et fait l'objet d'une publicité conformément à l'article 12, sans préjudice de formes de publicité additionnelles prévues par l'État membre du siège. Ce projet mentionne la dénomination sociale, le siège statutaire et le numéro d'immatriculation actuels de la SEC et comprend: | 2. The management or administrative organ shall draw up a transfer proposal and publicise it in accordance with Article 12, without prejudice to any additional forms of publication provided for by the Member State of the registered office. That proposal shall state the current name, the registered office and number of the SCE and shall cover |
| 7. Avant que l'autorité compétente ne délivre le certificat visé au paragraphe 8, la SEC doit prouver qu'en ce qui concerne les créances nées antérieurement à la publication de la proposition de transfert, les intérêts des créanciers et titulaires d'autres droits envers la SEC (y compris ceux des entités publiques) bénéficient d'une protection adéquate conformément aux dispositions prévues par l'État membre où la SEC a son siège statutaire avant le transfert. Un État membre peut étendre l'application du premier alinéa aux créances nées, ou susceptibles de naître, | 7. Before the competent authority issues the certificate mentioned in paragraph 8, the SCE shall satisfy it that, in respect of any liabilities arising prior to the publication of the transfer proposal, the interests of creditors and holders of other rights in respect of the SCE (including those of public bodies) have been adequately protected in accordance with requirements laid down by the Member State where the SCE has its registered office prior to the transfer. A Member State may extend the application of the first subparagraph to liabilities that arise, or may arise, prior to the transfer. |
avant le transfert.
Le premier et le deuxième alinéas
s'appliquent sans préjudice de
l'application aux SEC de la législation
nationale des États membres en ce qui
concerne le désintéressement ou la
garantie des paiements en faveur des
entités publiques.

8. Dans l'État membre du siège statutaire
de la SEC, un tribunal, un notaire ou une
autre autorité compétente délivre un
certificat attestant d'une manière
concluante l'accomplissement des actes
et des formalités préalables au transfert.

14. La législation d'un État membre peut
prévoir, en ce qui concerne les SEC
immatriculées dans ce dernier, qu'un
transfert du siège, dont résulterait un
changement du droit applicable, ne prend
pas effet si, dans le délai de deux mois
visé au paragraphe 6, une autorité
compétente de cet État s'y oppose. Cette
opposition ne peut avoir lieu que pour
des raisons d'intérêt public.
Lorsqu'une SEC est soumise au contrôle
d'une autorité nationale de surveillance
financière conformément aux directives
communautaires, le droit de s'opposer au
transfert du siège statutaire s'applique
egalement à cette autorité.
Elle est susceptible de recours devant
une autorité judiciaire.

**Article 8**
**Loi applicable**

1. La SEC est régie:
   c) pour les matières non réglées par le
   présent règlement ou, lorsqu'une matière
   l'est partiellement, pour les aspects non
   couverts par le présent règlement par:
   i) les lois adoptées par les États membres
   en application de mesures
   communautaires visant spécifiquement
   les SEC;
   ii) les lois des États membres qui
   s'appliqueraient à une société coopérative
   constituée selon le droit de l'État membre
dans lequel la SEC a son siège statutaire;
   iii) les dispositions des statuts de la SEC,
   dans les mêmes conditions que pour une
   coopérative constituée selon le droit de
   l'État membre dans lequel la SEC a son
   siège statutaire.

2. Si la législation nationale prévoit des
   règles et/ou restrictions spécifiques liées
tà la nature des activités exercées par une
SEC ou une forme de contrôle exercée
par une autorité de surveillance, cette
législation s'applique intégralement à la
SEC.

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

2. If national law provides for specific
   rules and/or restrictions related to the
   nature of business carried out by an
   SCE, or for forms of control by a
   supervisory authority, that law shall
   apply in full to the SCE.

The first and second subparagraphs shall
apply without prejudice to the
application to SCEs of the national
legislation of Member States concerning
the satisfaction or securing of payments
to public bodies.
| Article 10 | Mentions à faire figurer sur les documents
| Particulars to be stated in the documents |
| --- | --- |
| 1. Le droit applicable, dans l'État membre où la SEC a son siège statutaire, aux sociétés anonymes en ce qui concerne le contenu des lettres et documents destinés aux tiers s'applique par analogie à la SEC. La dénomination sociale est précédée ou suivie du sigle "SEC" et, le cas échéant, des termes "à responsabilité limitée". | 1. The law applicable, in the Member State where the SCE has its registered office, to public limited-liability companies regulating the content of the letters and documents sent to third parties shall apply by analogy to that SCE. The name of the SCE shall be preceded or followed by the abbreviation "SCE" and, where appropriate, by the word "limited". |

| Article 11 | Immatriculation et contenu de la publicité
| Registration and disclosure requirements |
| --- | --- |
| 1. Toute SEC est immatriculée dans l'État membre de son siège statutaire dans un registre désigné par la législation de cet État membre conformément au droit applicable aux sociétés anonymes. | 1. Every SCE shall be registered in the Member State in which it has its registered office in a register designated by the law of that Member State in accordance with the law applicable to public limited-liability companies. |

| Article 12 | Publicité des actes dans les États membres
| Publication of documents in the Member States |
| --- | --- |
| 1. Les actes et indications concernant la SEC soumis à publicité par le présent règlement font l'objet d'une publicité effectuée selon les modes prévus par la législation de l'État membre du siège statutaire de la SEC relative aux sociétés anonymes. | 1. Publication of documents and particulars concerning an SCE which must be made public under this Regulation shall be effected in the manner laid down in the laws of the Member State applicable to public limited-liability companies in which the SCE has its registered office. |

<p>| 2. Les dispositions nationales prises en application de la directive 89/666/CEE s'appliquent aux succursales de la SEC créées dans un État membre autre que celui de son siège. Toutefois, les États membres peuvent prévoir des dérogations aux dispositions nationales d'application de ladite directive pour tenir compte des spécificités des coopératives. | 2. The national rules adopted pursuant to Directive 89/666/EC shall apply to branches of an SCE opened in a Member State other than that in which it has its registered office. However, Member States may provide for derogations from the national provisions implementing that Directive to take account of the specific features of cooperatives. |
| Article 17 | Droit applicable durant la constitution | 1. Sous réserve du présent règlement, la constitution d'une SEC est régie par la loi applicable aux coopératives de l'État où la SEC fixe son siège statutaire. | 1. Subject to this Regulation, the formation of an SCE shall be governed by the law applicable to cooperatives in the Member State in which the SEC establishes its registered office. |
| Article 18 | Acquisition de la personnalité juridique | 1. La SEC acquiert la personnalité juridique le jour de son immatriculation dans l'État du siège au registre désigné par cet État selon l'article 11, paragraphe 1. | 1. An SCE shall acquire legal personality on the day of its registration in the Member State in which it has its registered office, in the register designated by that State in accordance with Article 11(1). |
| Article 20 | Droit applicable en cas de fusion | Pour les matières non couvertes par la présente section ou, lorsqu'une matière l'est partiellement, pour les aspects non couverts par elle, chaque coopérative participant à la constitution d'une SEC par voie de fusion est soumise aux dispositions applicables à la fusion de coopératives du droit de l'État membre dont elle relève et, à défaut, aux dispositions applicables aux fusions internes des sociétés anonymes du droit dudit État. | For matters not covered by this section or, where a matter is partly covered by it, for aspects not covered by it, each cooperative involved in the formation of an SCE by merger shall be governed by the provisions of the law of the Member State to which it is subject that apply to mergers of cooperatives and, failing that, the provisions applicable to internal mergers of public limited-liability companies under the law of that State. |
| Article 21 | Raisons pouvant motiver l'opposition à une fusion | La législation d'un État membre peut prévoir qu'une société coopérative relevant du droit de cet État membre ne peut participer à la constitution d'une SEC par voie de fusion si une autorité compétente de cet État membre s'y oppose avant la délivrance du certificat visé à l'article 29, paragraphe 2. Cette opposition ne peut avoir lieu que pour des raisons d'intérêt public. Elle est susceptible de recours devant une autorité judiciaire. | The laws of a Member State may provide that a cooperative governed by the law of that Member State may not take part in the formation of an SCE by merger if any of that Member State's competent authorities opposes it before the issue of the certificate referred to in Article 29(2). Such opposition may be based only on grounds of public interest. Review by a judicial authority shall be possible. |
| Article 24 | Publication | 1. Le droit applicable aux sociétés anonymes en ce qui concerne les exigences en matière de publicité des projets de fusion s'applique par analogie à chacune des coopératives qui fusionnent, sous réserve des exigences supplémentaires imposées par l'État membre dont relève la coopérative concernée. | 1. The law applicable to public limited-liability companies concerning the disclosure requirements of the draft terms of mergers shall apply by analogy to each of the merging cooperatives, subject to the additional requirements imposed by the Member State to which the cooperative concerned is subject. |</p>
<table>
<thead>
<tr>
<th>Article 26</th>
<th>La publication du projet dans le bulletin national comporte toutefois, pour chacune des coopératives qui fusionnent, les indications suivantes:</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.</td>
<td>2. Publication of the draft terms of merger in the national gazette shall, however, include the following particulars for each of the merging cooperatives:</td>
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<tr>
<th>Article 27</th>
<th>Report of independent experts</th>
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<tbody>
<tr>
<td>2.</td>
<td>2. Un rapport unique pour toutes les coopératives qui fusionnent peut être établi, lorsque les législations des États membres dont relèvent ces coopératives le permettent.</td>
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<table>
<thead>
<tr>
<th>Article 28</th>
<th>Droit applicable en cas de constitution par fusion</th>
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<tbody>
<tr>
<td>1.</td>
<td>1. Le droit de l'État membre dont relève chacune des coopératives qui fusionnent s'applique comme en cas de fusion de sociétés anonymes, compte tenu du caractère transfrontalier de la fusion, en ce qui concerne la protection des intérêts:</td>
</tr>
<tr>
<td>1.</td>
<td>- des créanciers des coopératives qui fusionnent,</td>
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<td>1.</td>
<td>- des obligataires des coopératives qui fusionnent.</td>
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<tr>
<th>Article 29</th>
<th>Contrôle de la procédure de fusion</th>
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<tbody>
<tr>
<td>1.</td>
<td>1. The law of the Member State governing each merging cooperative shall apply as in the case of a merger of public limited-liability companies, taking into account the cross-border nature of the merger, with regard to the protection of the interests of:</td>
</tr>
<tr>
<td>1.</td>
<td>- creditors of the merging cooperatives,</td>
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<td>1.</td>
<td>- holders of bonds in the merging cooperatives.</td>
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<tr>
<td>2.</td>
<td>2. A single report for all merging cooperatives may be drawn up where this is permitted by the laws of the Member States to which the cooperatives are subject.</td>
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<tr>
<td>2.</td>
<td>2. Un État membre peut adopter, en ce qui concerne les coopératives participant à la fusion qui relèvent de son droit, des dispositions destinées à assurer une protection appropriée aux membres qui se sont prononcés contre la fusion.</td>
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<tr>
<th>Article 29</th>
<th>Contrôle de la procédure de fusion</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.</td>
<td>2. A Member State may, in the case of the merging cooperatives governed by its law, adopt provisions designed to ensure appropriate protection for members who have opposed the merger.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Article 29</th>
<th>Contrôle de la procédure de fusion</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.</td>
<td>3. Si le droit d'un État membre dont relève une coopérative qui fusionne prévoit une procédure permettant d'analyser et de modifier le rapport d'échange des actions ou une procédure visant à indemniser les membres minoritaires, sans empêcher l'immatriculation de la fusion, ces</td>
</tr>
<tr>
<td>3.</td>
<td>procedures shall apply only if the other</td>
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</table>
procédures ne s'appliquent que si les autres coopératives qui fusionnent et qui sont situées dans un État membre ne prévoyant pas ce type de procédures acceptent explicitement, lorsqu'elles approuvent le projet de fusion conformément à l'article 27, paragraphe 1, la possibilité offerte aux membres de la coopérative qui fusionne dont il est question d'avoir recours auxdites procédures. Dans ce cas, un tribunal, un notaire ou une autre autorité compétente peut délivrer le certificat visé au paragraphe 2, même si une procédure de ce type a été engagée. Le certificat doit cependant mentionner que la procédure est en cours. La décision prise à l'issue de la procédure lie la coopérative absorbante et l'ensemble de ses membres.

merging cooperatives situated in Member States which do not provide for such procedure explicitly accept, when approving the draft terms of the merger in accordance with Article 27(1), the possibility for the members of that merging cooperative to have recourse to such procedure. In such cases, the court, notary or other competent authorities may issue the certificate referred to in paragraph 2 even if such a procedure has been started. The certificate must, however, indicate that the procedure is pending. The decision in the procedure shall be binding on the acquiring cooperative and all its members.

<table>
<thead>
<tr>
<th>Article 30</th>
<th>Contrôle de la légalité d'une fusion</th>
<th>Scrutiny of legality of merger</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1. Le contrôle de la légalité de la fusion est effectué, pour la partie de la procédure relative à la réalisation de la fusion et à la constitution de la SEC, par le tribunal, le notaire ou une autre autorité de l'État membre du futur siège de la SEC compétent pour contrôler cet aspect de la légalité de la fusion de coopératives, et, à défaut, de la fusion de sociétés anonymes.</td>
<td>1. The legality of a merger shall be scrutinised, as regards the part of the procedure concerning the completion of the merger and the formation of the SCE, by the court, notary or other competent authority in the Member State of the proposed registered office of the SCE able to scrutinise that aspect of the legality of mergers of cooperatives and, failing that, mergers of public limited-liability companies.</td>
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<thead>
<tr>
<th>Article 32</th>
<th>Publication</th>
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<tbody>
<tr>
<td></td>
<td>Pour chacune des coopératives qui fusionnent, la réalisation de la fusion fait l'objet d'une publicité effectuée selon les modalités prévues par la loi de l'État membre concerné conformément aux lois régissant la fusion de sociétés anonymes.</td>
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<table>
<thead>
<tr>
<th>Article 33</th>
<th>Effets d'une fusion</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>3. Lorsqu'en cas de fusion de coopératives, la loi d'un État membre requiert des formalités particulières pour l'opposabilité aux tiers du transfert de certains biens, droits et obligations apportés par les coopératives qui fusionnent, ces formalités s'appliquent et sont effectuées soit par les coopératives qui fusionnent, soit par la SEC à dater de son immatriculation.</td>
</tr>
</tbody>
</table>
4. Les droits et obligations des coopératives participantes en matière de conditions d'emploi, aussi bien individuelles que collectives, résultant de la législation, de la pratique et de contrats de travail individuels ou des relations de travail au niveau national et existant à la date de l'immatriculation sont transférés à la SEC du fait même de l'immatriculation.

4. The rights and obligations of the participating cooperatives in relation to both individual and collective terms and conditions of employment arising from national law, practice and individual employment contracts or employment relationships and existing at the date of the registration shall, by reason of such registration be transferred to the SCE.

| Section 3 | Transformation d'une coopérative existante en une SEC |

| Article 35 | Procédures de constitution par transformation |

| Article 37 | Functions of the management organ; appointment of members |

| Section 1 | Système dualiste |

| Section 3 | Conversion of an existing cooperative into an SCE |

5. Avant l'assemblée générale visée au paragraphe 6, un ou plusieurs experts indépendants désignés ou agréés, conformément aux dispositions nationales, par une autorité judiciaire ou administrative de l'État membre dont relève la coopérative qui se transforme en SEC, attestent, mutatis mutandis, que les dispositions de l'article 22, paragraphe 1, point b), sont respectées.

5. Before the general meeting referred to in paragraph 6, one or more independent experts appointed or approved, in accordance with the national provisions, by a judicial or administrative authority in the Member State to which the cooperative being converted into an SCE is subject shall certify mutatis mutandis that the rules of Article 22(1)(b) are respected.

8. Les droits et obligations de la coopérative à transformer en matière de conditions d'emploi, aussi bien individuelles que collectives, résultant de la législation, de la pratique et de contrats de travail individuels ou des relations de travail au niveau national et existant à la date de l'immatriculation sont transférés à la SEC du fait même de cette immatriculation.

8. The rights and obligations of the cooperative to be converted on both individual and collective terms and conditions of employment arising from national law, practice and individual employment contracts or employment relationships and existing at the date of the registration shall, by reason of such registration, be transferred to the SCE.

| CHAPITRE III | STRUCTURE DE LA SEC |

| CHAPTER III | STRUCTURE OF THE SCE |

| Article 37 | Functions of the management organ; appointment of members |

| Section 1 | Système dualiste |

1. L'organe de direction est responsable de la gestion de la SEC et la représente à l'égard des tiers et en justice. Un État membre peut prévoir qu'un directeur général est responsable de la gestion courante dans les mêmes conditions que pour les coopératives ayant leur siège statutaire sur son territoire.

1. The management organ shall be responsible for managing the SCE and shall represent it in dealings with third parties and in legal proceedings. A Member State may provide that a managing director is responsible for the current management under the same conditions as for cooperatives that have registered offices within that Member State's territory.

2. Le ou les membres de l'organe de direction sont nommés et révoqués par l'organe de surveillance. Toutefois, un État membre peut prévoir ou donner aux statuts la possibilité de prévoir que le ou les membres de l'organe de direction sont nommés par l'assemblée générale dans les mêmes conditions que pour les coopératives

2. The member or members of the management organ shall be appointed and removed by the supervisory organ. However, a Member State may require or permit the statutes to provide that the member or members of the management organ are appointed and removed by the general meeting under the same conditions as for cooperatives that have
| **Article 39**  
| Fonctions et désignation de l'organe de surveillance  
<table>
<thead>
<tr>
<th>Functions of the supervisory organ; appointment of members</th>
</tr>
</thead>
<tbody>
<tr>
<td>3. Nul ne peut simultanément exercer la fonction de membre de l'organe de direction et celle de membre de l'organe de surveillance de la SEC. Toutefois, l'organe de surveillance peut, en cas de vacance, désigner un de ses membres pour exercer les fonctions de membre de l'organe de direction. Au cours de cette période, les fonctions de l'intéressé en sa qualité de membre de l'organe de surveillance sont suspendues. Un État membre peut prévoir que cette période est limitée dans le temps.</td>
</tr>
<tr>
<td>3. No person may at the same time be a member of the management organ and of the supervisory organ of an SCE. The supervisory organ may, however, nominate one of its members to exercise the function of member of the management organ in the event of a vacancy. During such period, the functions of the person concerned as member of the supervisory organ shall be suspended. A Member State may impose a time limit on such a period.</td>
</tr>
</tbody>
</table>

| **Article 40**  
| Droit à l'information  
<table>
<thead>
<tr>
<th>Right to information</th>
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<tbody>
<tr>
<td>3. L'organe de surveillance peut demander à l'organe de direction la communication de renseignements de toute nature nécessaires au contrôle qu'il exerce conformément à l'article 39, paragraphe 1. Un État membre peut prévoir que chaque membre de l'organe de surveillance peut également bénéficier de cette faculté.</td>
</tr>
<tr>
<td>3. The supervisory organ may require the management organ to provide information of any kind, which it needs to exercise supervision in accordance with Article 39(1). A Member State may provide that each member of the supervisory organ also be entitled to this facility.</td>
</tr>
</tbody>
</table>

| **Section 2**  
| Système moniste  
<table>
<thead>
<tr>
<th>The one-tier system</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. L'organe d'administration assure la gestion de la SEC et la représente à l'égard des tiers et en justice. Un État membre peut prévoir qu’un directeur général est responsable de la gestion courante dans les mêmes conditions que pour les coopératives ayant leur siège statutaire sur son territoire.</td>
</tr>
<tr>
<td>1. The administrative organ shall manage the SCE and shall represent it in dealings with third parties and in legal proceedings. A Member State may provide that a managing director shall be responsible for the current management under the same conditions as for cooperatives that have registered office in its territory.</td>
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<tbody>
<tr>
<td>2. Le nombre des membres de l'organe d'administration ou les règles pour le déterminer sont fixés par les statuts de la</td>
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<tr>
<td>2. The number of members of the administrative organ or the rules for determining it shall be laid down in the</td>
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</table>
SEC. Toutefois, un État membre peut fixer le nombre minimal et, le cas échéant, maximal, des membres. L'organe d'administration ne peut compter parmi ses membres des membres non usagers qu'à concurrence du quart des postes à pourvoir. Néanmoins, cet organe doit être composé de trois membres au moins, lorsque la participation des travailleurs dans la SEC est organisée conformément à la directive 2003/72/CE.

<table>
<thead>
<tr>
<th>Article 46</th>
<th>Pouvoir de représentation et responsabilité de la SEC.</th>
<th>Section 3</th>
<th>Règles communes aux systèmes dualiste et moniste</th>
<th>4. En l'absence de dispositions relatives à un système moniste en ce qui concerne les coopératives ayant un siège statutaire sur son territoire, un État membre peut adopter les mesures appropriées concernant les SEC.</th>
<th>4. Where no provision is made for a one-tier system in relation to cooperatives with registered offices within its territory, a Member State may adopt the appropriate measures in relation to SCEs.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conditions d'éligibilité</td>
<td>Conditions of membership</td>
<td>1. Les statuts de la SEC peuvent prévoir qu'une société au sens de l'article 48 du traité peut être membre d'un de ses organes, à moins que la loi de l'État membre du siège de la SEC applicable aux coopératives n'en dispose autrement. Cette société désigne une personne physique comme représentant pour l'exercice des pouvoirs dans l'organe concerné. Ce représentant est soumis aux mêmes conditions et obligations que s'il était personnellement membre de cet organe.</td>
<td>1. An SCE's statutes may permit a company within the meaning of Article 48 of the Treaty to be a member of one of its organs, provided that the law applicable to cooperatives in the Member State in which the SCE's registered office is situated does not provide otherwise. That company shall designate a natural person as its representative to exercise its functions on the organ in question. The representative shall be subject to the same conditions and obligations as if he/she were personally a member of the organ.</td>
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<tr>
<td>2. Ne peuvent être membres d'un organe déterminé de la SEC, ni représentants d'un membre au sens du paragraphe 1, les personnes qui:</td>
<td>2. No person may be a member of any SCE organ or a representative of a member within the meaning of paragraph 1 who:</td>
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<tr>
<td>- ne peuvent faire partie, selon la loi de l'État membre du siège de la SEC, de l'organe correspondant d'une coopérative relevant du droit de cet État,</td>
<td>- is disqualified, under the law of the Member State in which the SCE's registered office is situated, from serving on the corresponding organ of a cooperative governed by the law of that State, or</td>
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<tr>
<td>- ne peuvent faire partie de l'organe correspondant d'une coopérative relevant du droit d'un État membre en raison d'une décision judiciaire ou administrative rendue dans un État membre.</td>
<td>- is disqualified from serving on the corresponding organ of a cooperative governed by the law of a Member State owing to a judicial or administrative decision delivered in a Member State.</td>
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<tr>
<td>3. Les statuts de la SEC peuvent fixer, à l'instar de ce qui est prévu par la loi de l'État membre applicable aux coopératives, des conditions particulières d'éligibilité pour les membres qui représentent l'organe d'administration.</td>
<td>3. An SCE's statutes may, in accordance with the law applicable to cooperatives in the Member State, lay down special conditions of eligibility for members representing the administrative organ.</td>
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<tr>
<td>Article 47</td>
<td>Pouvoir de représentation et responsabilité de la SEC.</td>
<td>Section 3</td>
<td>Rules common to the one-tier and two-tier systems</td>
<td>1. Lorsque l'exercice du pouvoir de représentation de la SEC à l'égard des tiers, conformément à l'article 37, paragraphe 1, et à l'article 42, paragraphe 1, est confié à plus d'un membre, ces</td>
<td>1. Where the authority to represent the SCE in dealings with third parties, in accordance with Articles 37(1) and 42(1), is conferred on two or more members, those members shall exercise</td>
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<tr>
<td>SEC</td>
<td>Power of representation and liability of the SCE</td>
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<tr>
<td>Article 48</td>
<td>Opérations soumises à autorisation</td>
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<tr>
<td>Article 49</td>
<td>Confidentialité</td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Article 50</td>
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**SEC**

membres exercent ce pouvoir à titre collectif, à moins que le droit de l'État du siège de la SEC ne permette aux statuts d'en disposer autrement, auquel cas cette clause peut être opposable aux tiers lorsqu'elle fait l'objet d'une publicité conformément à l'article 11, paragraphe 5, et à l'article 12. That authority collectively, unless the law of the Member State in which the SCE's registered office is situated allows the statutes to provide otherwise, in which case such a clause may be relied upon against third parties where it has been disclosed in accordance with Articles 11(5) and 12.

2. La SEC est engagée vis-à-vis des tiers par les actes de ses organes, même si ces actes ne relèvent pas de l'objet social de cette société, à condition que lesdits actes n'excèdent pas les pouvoirs que la loi de l'État membre du siège statutaire de la SEC attribue ou permet d'attribuer à ces organes. Toutefois, les États membres peuvent prévoir que la SEC n'est pas engagée lorsque ces actes dépassent les limites de l'objet social de la SEC, si cette dernière prouve que le tiers savait que l'acte dépassait cet objet ou ne pouvait l'ignorer, compte tenu des circonstances, étant exclu que la seule publication des statuts suffise à constituer cette preuve.

4. Un État membre peut prévoir que le pouvoir de représentation de la SEC peut être attribué par les statuts à une seule personne ou à plusieurs personnes agissant conjointement. Cette législation peut prévoir l'opposabilité de cette disposition des statuts aux tiers, à condition qu'elle concerne le pouvoir général de représentation. L'opposabilité ou non d'une telle disposition aux tiers est réglée par l'article 12.

3. Toutefois, la SEC est engagee vis-à-vis des tiers par les actes de ses organes, meme si ces actes ne relèvent pas de l'objet social de cette société, à condition que lesdits actes n'excèdent pas les pouvoirs que la loi de l'État membre du siège statutaire de la SEC attribue ou permet d'attribuer à ces organes. Toutefois, les États membres peuvent prévoir que la SEC n'est pas engagee lorsque ces actes dépassent les limites de l'objet social de la SEC, si cette dernière prouve que le tiers savait que l'acte dépassait cet objet ou ne pouvait l'ignorer, compte tenu des circonstances, étant exclu que la seule publication des statuts suffise à constituer cette preuve.

4. A Member State may stipulate that the power to represent the SEC may be conferred by the statutes on a single person or on several persons acting jointly. Such legislation may stipulate that this provision of the statutes may be relied on as against third parties provided that it concerns the general power of representation. Whether or not such a provision may be relied on as against third parties shall be governed by the provisions of Article 12.

3. However, a Member State may determine the minimum categories of transactions and the organ which shall give the authorisation which must feature in the statutes of SCEs registered in its territory and/or provide that, under the two-tier system, the supervisory organ may itself determine which categories of transactions are to be subject to authorisation.

4. A Member State may stipulate that the power to represent the SEC may be conferred by the statutes on a single person or on several persons acting jointly. Such legislation may stipulate that this provision of the statutes may be relied on as against third parties provided that it concerns the general power of representation. Whether or not such a provision may be relied on as against third parties shall be governed by the provisions of Article 12.

3. Where employee participation is provided for in accordance with...
| Délibération des organes | à la directive 2003/72/CE, un État membre peut prévoir que le quorum et la prise de décision de l'organe de surveillance sont, par dérogation aux paragraphes 1 et 2, soumis aux règles applicables, dans les mêmes conditions, aux coopératives relevant du droit de l'État membre concerné. |
| Conduct of the business of organs | Directive 2003/72/EC, a Member State may provide that the supervisory organ's quorum and decision-making shall, by way of derogation from the provisions referred to in paragraphs 1 and 2, be subject to the rules applicable, under the same conditions, to cooperatives governed by the law of the Member State concerned. |
| Article 51 | Les membres de l'organe de direction, de surveillance ou d'administration répondent, selon les dispositions de l'État membre du siège de la SEC applicables aux coopératives, du préjudice subi par la SEC par suite de la violation par eux des obligations légales, statutaires ou autres inhérentes à leurs fonctions. |
| Responsabilité civile | Members of management, supervisory and administrative organs shall be liable, in accordance with the provisions applicable to cooperatives in the Member State in which the SCE's registered office is situated, for loss or damage sustained by the SCE following any breach on their part of the legal, statutory or other obligations inherent in their duties. |
| Article 52 | L'assemblée générale décide dans les matières pour lesquelles une compétence spécifique lui est conférée par: a) le présent règlement, ou b) la législation de l'État membre où la SEC a son siège statutaire, adoptée au titre de la directive 2003/72/CEE. En outre, l'assemblée générale décide dans les matières pour lesquelles une compétence est conférée à l'assemblée générale d'une société coopérative relevant du droit de l'État où la SEC a son siège, soit par la loi de cet État, soit par les statuts conformément à cette même loi. |
| Compétence | The general meeting shall decide on matters for which it is given sole responsibility by: (a) this Regulation; or (b) the legislation of the Member State in which the SCE's registered office is situated, adopted under Directive 2003/72/EC. Furthermore, the general meeting shall decide on matters for which responsibility is given to the general meeting of a cooperative governed by the law of the Member State in which the SCE's registered office is situated, either by the law of that Member State or by the SCE's statutes in accordance with that law. |
| Article 53 | Sans préjudice des règles prévues par la présente section, l'organisation et le déroulement de l'assemblée générale ainsi que les procédures de vote sont régis par la loi de l'État membre du siège statutaire de la SEC applicable aux coopératives. |
| Conduite de l'assemblée générale | Without prejudice to the rules laid down in this section, the organisation and conduct of general meetings together with voting procedures shall be governed by the law applicable to cooperatives in the Member State in which the SCE's registered office is situated. |
| Conduct of general meetings | 1. L'assemblée générale a lieu au moins une fois par année calendrier, dans les six mois de la clôture de l'exercice, à moins que la loi de l'État membre du siège statutaire de la SEC applicable aux coopératives exerçant le même type d'activité que la SEC ne prévoie une fréquence supérieure. Toutefois, un État membre peut prévoir que la première assemblée générale peut avoir lieu dans les dix-huit mois suivant la constitution de la SEC. |
| Article 54 | 1. An SCE shall hold a general meeting at least once each calendar year, within six months of the end of its financial year, unless the law of the Member State in which the SCE's registered office is situated applicable to cooperatives carrying on the same type of activity as the SCE provides for more frequent meetings. A Member State may, however, provide that the first general meeting may be held at any time in the 18 months following an SCE's incorporation. |
| Convocation de l'assemblée générale | 2. L'assemblée générale peut être convoquée à tout moment par l'organe de direction, par l'organe d'administration, |
| Holding of general meetings | 2. General meetings may be convened at any time by the management organ or the administrative organ, the supervisory |
par l'organe de surveillance, ou par tout autre organe ou autorité compétente conformément à la loi nationale de l'État membre du siège statutaire de la SEC applicable aux coopératives. À la demande de l'organe de surveillance, l'organe de direction est tenu de la convoquer.

organ or any other organ or competent authority in accordance with the national law applicable to cooperatives in the Member State in which the SCE's registered office is situated. The management organ shall be bound to convene a general meeting at the request of the supervisory organ.

<table>
<thead>
<tr>
<th>Article 59</th>
<th>Droit de vote</th>
<th>Voting rights</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Chaque membre de la SEC dispose d'une voix, quel que soit le nombre de parts qu'il détient.</td>
<td>1. Each member of an SCE shall have one vote, regardless of the number of shares he holds.</td>
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</tr>
<tr>
<td>2. Lorsque la loi de l'État membre dans lequel la SEC a son siège le permet, les statuts peuvent prévoir qu'un membre dispose d'un nombre de voix qui est déterminé par sa participation aux activités de la coopérative, à l'exclusion de sa participation sous forme de contribution au capital. Les voix ainsi attribuées ne peuvent dépasser le nombre de cinq par membre, ou 30 % du total des droits de vote, la valeur la plus faible étant retenue. Lorsque la loi de l'État membre dans lequel la SEC a son siège le permet, les statuts des SEC participant à des activités dans le domaine financier ou de l'assurance peuvent prévoir que le nombre de voix est déterminé par la participation du membre aux activités de la coopérative, y compris sous forme de participation au capital de la SEC. Les voix ainsi attribuées ne peuvent dépasser le nombre de cinq par membre, ou 20 % du total des droits de vote, la valeur la plus faible étant retenue. Lorsque la loi de l'État membre dans lequel la SEC a son siège le permet, les statuts des SEC dont les membres sont majoritairement des coopératives peuvent prévoir que le nombre de voix est déterminé en fonction de la participation des membres aux activités exercées par la coopérative, y compris sous forme de participation au capital de la SEC, et/ou du nombre de membres de chaque entité constitutive.</td>
<td>2. If the law of the Member State in which the SCE has its registered office so permits, the statutes may provide for a member to have a number of votes determined by his/her participation in the cooperative activity other than by way of capital contribution. This attribution shall not exceed five votes per member or 30 % of total voting rights, whichever is the lower. If the law of the Member State in which the SCE has its registered office so permits, SCEs involved in financial or insurance activities may provide in their statutes for the number of votes to be determined by the members' participation in the cooperative activity including participation in the capital of the SCE. This attribution shall not exceed five votes per member or 20 % of total voting rights, whichever is the lower. In SCEs the majority of members of which are cooperatives, if the law of the Member State in which the SCE has its registered office so permits, the statutes may provide for the number of votes to be determined in accordance with the members' participation in the cooperative activity including participation in the capital of the SCE and/or by the number of members of each comprising entity.</td>
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</tr>
<tr>
<td>3. En ce qui concerne les droits de vote que les statuts peuvent attribuer aux membres (investisseurs) non usagers, la SEC est régie par le droit de l'État membre dans lequel la SEC a son siège. Néanmoins, on ne peut attribuer aux non usagers (investisseurs) plus de 25 % du total des droits de vote.</td>
<td>3. As regards voting rights which the statutes may allocate to non-user (investor) members, the SCE shall be governed by the law of the Member State in which the SCE has its registered office. Nevertheless, non-user (investor) members may not together have voting rights amounting to more than 25 % of total voting rights.</td>
<td></td>
</tr>
<tr>
<td>4. Si, au moment de l'entrée en vigueur du présent règlement, la loi de l'État membre dans lequel la SEC a son siège le permet, les statuts de ladite SEC peuvent prévoir la participation de représentants des travailleurs aux</td>
<td>4. If, on the entry into force of this Regulation, the law of the Member State where an SCE has its registered office so permits, the statutes of that SCE may provide for the participation of employees' representatives in the general</td>
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</tbody>
</table>
assemblées générales ou aux assemblées de section ou de branche, à condition qu'ensemble, les représentants des travailleurs ne contrôlent pas plus de 15 % du total des droits de vote. Ce droit de participation cesse d'être applicable dès lors que le siège de la SEC est transféré dans un État membre dont la loi ne prévoit pas la participation des travailleurs.

Article 61
Prise de décision
Decisions

3. Les statuts prévoient les règles de quorum et de majorité applicables aux assemblées générales. Lorsque les statuts prévoient que la SEC peut admettre des membres investisseurs (non usagers) ou attribuer les droits de vote en fonction de la contribution au capital des SEC participant à des activités dans le domaine financier ou de l'assurance, les statuts peuvent également comporter des dispositions particulières relatives au quorum à atteindre par les membres autres que les membres investisseurs (non usagers) ou les membres disposant de droits de vote en fonction de la contribution au capital des SEC participant à des activités dans le domaine financier ou de l'assurance. Les États membres sont libres de définir ce quorum pour les SEC qui ont établi leur siège sur leur territoire.

Article 63
Assemblée de branche ou de section
Sectorial or section meetings

1. Lorsque la SEC exerce différentes activités ou exerce ses activités sur plus d'une unité territoriale, ou lorsqu'elle a plusieurs établissements ou que le nombre de ses membres est supérieur à cinq cents, ses statuts peuvent prévoir des assemblées de branche ou de section, si la législation de l'État membre concerné le permet. Les statuts déterminent la répartition en branches ou sections et le nombre de délégués dont celles-ci disposent.

CHAPITRE IV
ÉMISSION DE TITRES À AVANTAGES PARTICULIERS

CHAPTER IV
ISSUE OF SHARES CONFERRING SPECIAL ADVANTAGE

CHAPITRE V
AFFECTATION DU RÉSULTAT

CHAPTER V
ALLOCATION OF PROFITS

Article 65
Réserve légale
Legal reserve

1. Sans préjudice des dispositions obligatoires de la législation nationale, les statuts déterminent les règles d'affectation de l'excédent de l'exercice.

CHAPITRE VI
COMPTES ANNUELS ET COMPTES CONSOLIDÉS

CHAPTER VI
ANNUAL ACCOUNTS AND CONSOLIDATED ACCOUNTS

Article 68
Établissement des comptes annuels et consolidés
Preparation of annual accounts

1. La SEC est assujettie, en ce qui concerne l'établissement de ses comptes annuels et, le cas échéant, consolidés, y compris le rapport de gestion les accompagnant, leur contrôle et leur publicité, aux dispositions législatives adoptées dans l'État membre de son siège.

1. For the purposes of drawing up its annual accounts and its consolidated accounts if any, including the annual report accompanying them and their auditing and publication, an SCE shall be subject to the legal provisions adopted in the Member State in which it
and consolidated accounts

pour mettre en oeuvre les directives 78/660/CEE et 83/349/CEE. Toutefois, les États membres peuvent prévoir des modifications des dispositions nationales d'application de ces directives pour tenir compte des spécificités des coopératives.

has its registered office in implementation of Directives 78/660/EEC and 83/349/EEC. However, Member States may provide for amendments to the national provisions implementing those Directives to take account of the specific features of cooperatives.

<table>
<thead>
<tr>
<th>Article 69</th>
<th>Comptes des SEC exerçant des activités de crédit ou des activités financières</th>
<th>Accounts of SCEs with credit or financial activities</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Les SEC qui sont des établissements de crédit ou des établissements financiers sont assujetties, en ce qui concerne l'établissement de leurs comptes annuels et, le cas échéant, de leurs comptes consolidés, y compris le rapport de gestion les accompagnant, leur contrôle et leur publicité, aux règles prévues dans le droit national de l'État membre du siège en application des directives concernant l'accès à l'activité des établissements de crédit et son exercice.</td>
<td>1. An SCE which is a credit or financial institution shall be governed by the rules laid down in the national law of the Member State in which its registered office is situated under directives as regards the preparation of its annual and, where appropriate, consolidated accounts including the accompanying annual report and the auditing and publication of those accounts.</td>
<td></td>
</tr>
<tr>
<td>2. Les SEC qui sont des entreprises d'assurance sont assujetties, en ce qui concerne l'établissement de leurs comptes annuels et, le cas échéant, de leurs comptes consolidés, y compris le rapport de gestion les accompagnant, leur contrôle et leur publicité, aux règles prévues dans le droit national de l'État membre du siège au titre des directives concernant les comptes annuels et les comptes consolidés des entreprises d'assurance.</td>
<td>2. An SCE which is an insurance undertaking shall be governed by the rules laid down in the national law of the Member State in which its registered office is situated under directives as regards the preparation of its annual and, where appropriate, consolidated accounts including the accompanying annual report and the auditing and publication of those accounts.</td>
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<thead>
<tr>
<th>Article 70</th>
<th>Contrôle légal des comptes Auditing</th>
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</thead>
<tbody>
<tr>
<td>Le contrôle légal des comptes annuels et, le cas échéant, consolidés de la SEC est effectué par une ou plusieurs personnes agréées dans l'État membre dans lequel la SEC a son siège conformément aux dispositions prises par cet État pour mettre en oeuvre les directives 84/253/CEE et 89/48/CEE.</td>
<td>The statutory audit of an SCE's annual accounts and its consolidated accounts if any shall be carried out by one or more persons authorized to do so in the Member State in which the SCE has its registered office in accordance with the measures adopted in that State pursuant to Directives 84/253/EEC and 89/48/EEC.</td>
</tr>
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<thead>
<tr>
<th>Article 71</th>
<th>Système de révision et de contrôle System of auditing</th>
</tr>
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<tbody>
<tr>
<td>Dès lors que le droit d'un Etat membre fait obligation à l'ensemble des sociétés coopératives, ou à un certain type de sociétés coopératives, relevant du droit de cet État d'adhérer à un organisme extérieur légalement habilité et de se soumettre à un mode spécifique de révision et de contrôle exercé par cet</td>
<td>Where the law of a Member State requires all cooperatives, or a certain type of them, covered by the law of that State to join a legally authorized external body and to submit to a specific system of auditing carried out by that body, the arrangements shall automatically apply to an SCE with its</td>
</tr>
<tr>
<td>Article 72</td>
<td>Dissolution, insolvabilité et procédures analogues</td>
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<tr>
<td>CHAPITRE VII WINDING UP; LIQUIDATION; INSOLVENCY AND CESSATION OF PAYMENTS</td>
<td></td>
</tr>
<tr>
<td>Article 72</td>
<td>Dissolution, insolvabilité et procédures analogues</td>
</tr>
<tr>
<td>En ce qui concerne la dissolution, la liquidation, l'insolvabilité, la cessation des paiements et les procédures analogues, la SEC est soumise aux dispositions légales qui s'appliqueraient à une coopérative constituée selon le droit de l'État membre dans lequel la SEC a son siège statutaire, y compris celles relatives à la prise de décision par l'assemblée générale.</td>
<td>As regards winding-up, liquidation, insolvency, cessation of payments and similar procedures, an SCE shall be governed by the legal provisions which would apply to a cooperative formed in accordance with the law of the Member State in which its registered office is situated, including provisions relating to decision-making by the general meeting.</td>
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</table>

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<thead>
<tr>
<th>Article 73</th>
<th>Dissolution par le tribunal ou par une autre autorité compétente de l'État membre du siège de la SEC</th>
<th>Winding-up by the court or other competent authority of the Member State where the SCE has its registered office</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. À la demande de toute personne ayant un intérêt légitime ou d'une autorité administrative compétente de l'État membre du siège de la SEC prononce la dissolution de cette dernière lorsqu'il constate que l'article 2, paragraphe 1, et/ou l'article 3, paragraphe 2, ont été violés, ainsi que dans les cas visés à l'article 34. Le tribunal ou l'autorité administrative compétente peut accorder un délai à la SEC pour régulariser sa situation. Si la régularisation n'intervient pas au cours de ce délai, le tribunal ou l'autorité administrative compétente prononce la dissolution.</td>
<td>1. On an application by any person with a legitimate interest or any competent authority, the court or any competent administrative authority of the Member State where the SCE has its registered office shall order the SCE to be wound up where it finds that there has been a breach of Article 2(1) and/or Article 3(2) and in the cases covered by Article 34. The court or the competent administrative authority may allow the SCE time to rectify the situation. If it fails to do so within the time allowed, the court or the competent administrative authority shall order it to be wound up.</td>
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<tr>
<td>2. Lorsqu'une SEC ne remplit plus l'obligation prévue à l'article 6, l'État membre où la SEC a son siège statutaire prend les mesures appropriées pour obliger la SEC à régulariser sa situation dans un délai déterminé: -soit en rétablissant son administration centrale dans l'État membre du siège, - soit en procédant au transfert du siège statutaire par la procédure prévue à l'article 7.</td>
<td>2. When an SCE no longer complies with the requirement laid down in Article 6, the Member State in which the SCE's registered office is situated shall take appropriate measures to oblige the SCE to regularise its situation within a specified period either: - by re-establishing its head office in the Member State in which its registered office is situated, or - by transferring the registered office by means of the procedure laid down in Article 7.</td>
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<tr>
<td>3. L'État membre du siège de la SEC prend les mesures nécessaires pour garantir qu'une SEC qui ne régulariserait pas sa situation, conformément au paragraphe 2, est mise en liquidation.</td>
<td>3. The Member State in which the SCE's registered office is situated shall put in place the measures necessary to ensure that an SCE which fails to regularise its position in accordance with paragraph 2 is liquidated.</td>
<td></td>
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<tr>
<td>4. L'État membre du siège statutaire de la SEC peut former un recours juridictionnel ou faire appel à tout autre moyen juridique adéquat en cas de violation constatée de l'article 6. Ce recours a un effet suspensif sur les</td>
<td>4. The Member State in which the SCE's registered office is situated shall seek judicial or other appropriate remedy with regard to any established infringement of Article 6. That remedy shall have suspensory effect on the</td>
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<tr>
<td>Article 74</td>
<td>Publicité de la dissolution (Publication of winding-up)</td>
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<tr>
<td>L'ouverture d'une procédure de dissolution, y compris la dissolution volontaire, de liquidation, d'insolvabilité ou de cessation des paiements, ainsi que sa clôture et la décision de poursuite de l'activité, font l'objet d'une publicité conformément à l'article 12, sans préjudice des dispositions de droit national imposant des mesures de publicité additionnelles.</td>
<td>Without prejudice to provisions of national law requiring additional publication, the initiation and termination of winding-up including voluntary winding-up, liquidation, insolvency or suspension of payment procedures and any decision to continue operating shall be publicized in accordance with Article 12.</td>
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<tr>
<th>Article 75</th>
<th>Dévolution de l'actif (Distribution)</th>
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<tbody>
<tr>
<td>L'actif net est dévolu en fonction du principe de dévolution désintéressée ou, lorsque la loi de l'État membre du siège de la SEC le permet, selon d'autres modalités définies dans les statuts de la SEC. Aux fins du présent article, l'actif net comprend les actifs résiduels après paiement de tous les montants dus aux créanciers et remboursement aux membres de leurs contributions au capital.</td>
<td>Net assets shall be distributed in accordance with the principle of disinterested distribution, or, where permitted by the law of the Member State in which the SCE has its registered office, in accordance with an alternative arrangement set out in the statutes of the SCE. For the purposes of this Article, net assets shall comprise residual assets after payment of all amounts due to creditors and reimbursement of members' capital contributions.</td>
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<thead>
<tr>
<th>Article 76</th>
<th>Transformation en coopérative (Conversion into a cooperative)</th>
</tr>
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<tbody>
<tr>
<td>1. La SEC peut se transformer en coopérative relevant du droit de l'État membre de son siège statutaire. La décision concernant la transformation ne peut être prise avant deux ans à partir de son immatriculation et avant que les deux premiers comptes annuels n'aient été approuvés.</td>
<td>1. An SCE may be converted into a cooperative governed by the law of the Member State in which its registered office is situated. No decision on conversion may be taken before two years have elapsed since its registration or before the first two sets of annual accounts have been approved.</td>
</tr>
<tr>
<td>4. Le projet de transformation fait l'objet d'une publicité effectuée selon le mode prévu par la législation de chaque État membre, un mois au moins avant la date de la réunion de l'assemblée générale appelée à se prononcer sur la transformation.</td>
<td>4. The draft terms of conversion shall be made public in the manner laid down in each Member State's law at least one month before the general meeting called to decide on conversion.</td>
</tr>
<tr>
<td>5. Avant l'assemblée générale visée au paragraphe 6, un ou plusieurs experts indépendants désignés ou agréés, selon les dispositions nationales, par une autorité judiciaire ou administrative de l'État membre dont relève la SEC qui se transforme en coopérative, attestent que cette dernière dispose d'actifs correspondant au moins au capital.</td>
<td>5. Before the general meeting referred to in paragraph 6, one or more independent experts appointed or approved, in accordance with the national provisions, by a judicial or administrative authority in the Member State to which the SCE being converted into a cooperative is subject, shall certify that the latter has assets at least equivalent to its capital.</td>
</tr>
<tr>
<td>6. L'assemblée générale de la SEC approuve le projet de transformation ainsi que les statuts de la coopérative. La décision de l'assemblée générale est prise dans les conditions prévues par les</td>
<td>6. The general meeting of the SCE shall approve the draft terms of conversion together with the statutes of the cooperative. The decision of the general meeting shall be passed as laid down in</td>
</tr>
<tr>
<td>Article 78 Dispositions nationales d'application</td>
<td>National implementing rules</td>
</tr>
<tr>
<td>CHAPITRE VIII DISPOSITIONS COMPLÉMENTAIRES ET TRANSITOIRES</td>
<td>CHAPTER VIII ADDITIONAL AND TRANSITIONAL PROVISIONS</td>
</tr>
<tr>
<td>CHAPITRE IX DISPOSITIONS FINALES</td>
<td>CHAPTER IX FINAL PROVISIONS</td>
</tr>
<tr>
<td>2. Chaque État membre désigne les autorités compétentes au sens des articles 7, 21, 29, 30, 54 et 73. Il en informe la Commission et les autres États membres.</td>
<td>2. Each Member State shall designate the competent authorities within the meaning of Articles 7, 21, 29, 30, 54 and 73. It shall inform the Commission and the other Member States accordingly.</td>
</tr>
</tbody>
</table>
OPTIONS
Options pour les États Membres

Article 2
Constitution

2. Un État membre peut prévoir qu'une entité juridique n'ayant pas son administration centrale dans la Communauté peut participer à la constitution d'une SEC, si elle est constituée selon le droit d'un État membre, a son siège statutaire dans ce même État membre et a un lien effectif et continu avec l'économie d'un État membre.

- L'État peut permettre à une entité juridique qui a son siège statutaire dans un État membre, mais qui n'a pas son administration centrale dans la Communauté, de faire partie de la SEC, aux conditions prévues dans cet article.
- Voulez-vous le faire?

Article 6
Siège statutaire

Le siège statutaire de la SEC est situé à l'intérieur de la Communauté, dans le même État membre que son administration centrale. Un État membre peut, en outre, imposer aux SEC immatriculées sur son territoire l'obligation d'avoir leur administration centrale et leur siège statutaire au même endroit.

- L'État membre peut imposer aux SCE immatriculées sur son territoire d'avoir le siège statutaire et l'administration centrale à la même adresse.
- Qu'est-ce que vous pensez faire par rapport à cette possibilité ?

Article 7
Transfert du siège statutaire

7. Avant que l'autorité compétente ne délivre le certificat visé au paragraphe 8, la SEC doit prouver qu'en ce qui concerne les créances nées antérieurement à la publication de la proposition de transfert, les intérêts des créanciers et titulaires d'autres droits envers la SEC (y compris ceux des entités publiques) bénéficient d'une protection adéquate conformément aux dispositions prévues par l'État membre où la SEC a son siège statutaire avant le transfert. Un État membre peut étendre l'application du premier alinéa aux créances nées, ou susceptibles de naître, avant le transfert.

- Le Règlement donne la possibilité à l'État d'étendre la protection des créanciers et de titulaires d'autres droit aux créances nées avant le transfert (entre la date de la publication du projet et la date du transfert).
- Pensez-vous agir en ce sens ?

Le premier et le deuxième alinéas s'appliquent sans préjudice de l'application aux SEC de la législation nationale des États membres en ce qui concerne le désintéressement ou la garantie des paiements en faveur des entités publiques.

Avez-vous une telle législation exceptionnelle en faveur des autorités publiques ?
14. La législation d'un État membre peut prévoir, en ce qui concerne les SEC immatriculées dans ce dernier, qu'un transfert du siège, dont résulterait un changement du droit applicable, ne prend pas effet si, dans le délai de deux mois visé au paragraphe 6, une autorité compétente de cet État s'y oppose. Cette opposition ne peut avoir lieu que pour des raisons d'intérêt public.

- L'État peut prévoir la possibilité qu'une autorité compétente (par exemple autorité judiciaire, fiscale) puisse s'opposer au transfert dans un délai de deux mois, pour des raisons d'intérêt publique.
- Pensez-vous d'introduire cette possibilité dans votre législation ?

**Article 11**

Immatriculation et contenu de la publicité

4. Les statuts de la SEC ne doivent à aucun moment entrer en conflit avec les modalités relatives à l'implication des travailleurs qui ont été fixées. Lorsque de nouvelles modalités fixées conformément à la directive 2003/72/CE entrent en conflit avec les statuts existants, ceux-ci sont modifiés dans la mesure nécessaire.

En pareil cas, un État membre peut prévoir que l'organe de direction ou l'organe d'administration de la SEC a le droit d'apporter des modifications aux statuts sans nouvelle décision de l'assemblée générale des actionnaires.

- Il s'agit d'une option très pratique qui va rendre plus rapide l'exécution d'une obligation juridique.
- Pensez-vous faire usage de cette option ?

**Article 12**

Publicité des actes dans les États membres

2. Les dispositions nationales prises en application de la directive 89/666/CEE s'appliquent aux succursales de la SEC créées dans un État membre autre que celui de son siège. Toutefois, les États membres peuvent prévoir des dérogations aux dispositions nationales d'application de ladite directive pour tenir compte des spécificités des coopératives.

- Pensez-vous faire usage de cette option ?

**Article 14**

Acquisition de la qualité de membre

1. Les statuts peuvent stipuler que, lorsque la législation de l'État membre où se trouve le siège de la SEC le permet, des personnes n'ayant pas vocation à utiliser ou à produire les biens et les services de la SEC peuvent être admis en qualité de membres investisseurs (non-usagers).

- Si la législation de l'État le permet, les statuts peuvent accorder l'admission aux membres investisseurs (avec l'approbation de l'Assemblée générale).
- Est-ce que vous avez une telle disposition dans votre législation ?
- Pensez-vous l'introduire ?

**Article 21**

Raisons pouvant motiver l'opposition à une fusion
La législation d'un État membre peut prévoir qu'une société coopérative relevant du droit de cet État membre ne peut participer à la constitution d'une SEC par voie de fusion si une autorité compétente de cet État membre s'y oppose avant la délivrance du certificat visé à l'article 29, paragraphe 2.

Cette opposition ne peut avoir lieu que pour des raisons d'intérêt public. Elle est susceptible de recours devant une autorité judiciaire.

- L'État peut prévoir que des autorités s'opposent à la fusion, pour des raisons d'intérêt publique. C'est un droit reconnu par le Traité et pour lequel il n'était pas nécessaire d'avoir une référence au Règlement.

- Pensez-vous prévoir néanmoins une procédure spécifique pour des cas pareils? Quelle sera l'autorité compétente à la faire? A notre avis elle devrait être la même qui fait le contrôle de la fusion des sociétés nationaux, selon la 3ème directive.

**Article 35**

**Procédures de constitution par transformation**

7. Les États membres peuvent subordonner une transformation au vote favorable d'une majorité qualifiée ou de l'unanimité au sein de l'organe de contrôle de la coopérative à transformer dans lequel la participation des travailleurs est organisée.

- Pensez-vous faire usage de cette option?

**Article 37**

**Fonctions de l'organe de direction et désignation des membres**

1. L'organe de direction est responsable de la gestion de la SEC et la représente à l'égard des tiers et en justice. Un État membre peut prévoir qu'un directeur général est responsable de la gestion courante dans les mêmes conditions que pour les coopératives ayant leur siège statutaire sur son territoire.

- Le Règlement donne la possibilité aux États de permettre à ce qu'un directeur gère la SCE dans les mêmes conditions que pour les coopératives relevant du droit interne. Une telle possibilité est très utile pour les coopératives.

- Pensez-vous faire usage de cette option?

2. Le ou les membres de l'organe de direction sont nommés et révoqués par l'organe de surveillance. Toutefois, un État membre peut prévoir ou donner aux statuts la possibilité de prévoir que le ou les membres de l'organe de direction sont nommés par l'assemblée générale dans les mêmes conditions que pour les coopératives ayant leur siège statutaire sur son territoire.

- Il faut noter que cette option ne peut affecter les droits de participation des travailleurs, s'ils sont représentés dans l'organe de surveillance.

- Pensez-vous faire usage de cette option?

3. Nul ne peut simultanément exercer la fonction de membre de l'organe de direction et celle de membre de l'organe de surveillance de la SEC. Toutefois, l'organe de surveillance peut, en cas de vacance, désigner un de ses membres pour exercer les fonctions de membre de l'organe de direction. Au cours de cette période, les fonctions de l'intéressé en sa qualité de membre de l'organe de surveillance sont suspendues. Un État membre peut prévoir que cette période est limitée dans le temps.
- Pensez vous faire usage de cette option ?

4. Le nombre des membres de l'organe de direction ou les règles pour sa détermination sont fixés par les statuts de la SEC. Un État membre peut toutefois fixer un nombre minimal et/ou maximal de membres.

- Pensez vous faire usage de cette option ? Dans ce cas là, quel sera le nombre minimal et/ou maximal des membres ?

5. En l'absence de dispositions relatives à un système dualiste en ce qui concerne les coopératives ayant un siège statutaire sur son territoire, un État membre peut adopter les mesures appropriées concernant les SEC.

- Le Règlement donne aux États la possibilité d'introduire le système dualiste dans les États membres qui ne l'ont pas. Pensez vous faire usage de cette option ?

**Article 39**
**Fonctions et désignation de l'organe de surveillance**

4. Les statuts fixent le nombre des membres de l'organe de surveillance ou les règles pour sa détermination. Un État membre peut, toutefois, fixer le nombre des membres de l'organe de surveillance ou sa composition pour les SEC ayant leur siège statutaire sur son territoire ou un nombre de membres minimal et/ou maximal.

- L'État peut fixer le nombre des membres de l’organe de surveillance ou les règles pour sa composition. Pensez vous faire usage de cette option ? Comment ? (fixer les nombres des membres ou seulement le nombre minimal ou maximal). Avez-vous de règles concernant la composition ?

**Article 40**
**Droit à l'information**

3. L'organe de surveillance peut demander à l'organe de direction la communication de renseignements de toute nature nécessaires au contrôle qu'il exerce conformément à l'article 39, paragraphe 1. Un État membre peut prévoir que chaque membre de l'organe de surveillance peut également bénéficier de cette faculté.

- Pensez vous faire usage de cette option ?

**Article 42**
**Fonctions et désignation de l'organe d'administration**

1. L'organe d'administration assure la gestion de la SEC et la représente à l'égard des tiers et en justice. Un État membre peut prévoir qu'un directeur général est responsable de la gestion courante dans les mêmes conditions que pour les coopératives ayant leur siège statutaire sur son territoire.

- Le Règlement donne la possibilité aux États de permettre à ce qu'un directeur général gère la SCE dans les mêmes conditions que pour les coopératives relevant du droit interne. Une telle possibilité est très utile pour les coopératives.
- Pensez vous faire usage de cette option ? (voir aussi article 37)
2. Le nombre des membres de l'organe d'administration ou les règles pour le déterminer sont fixés par les statuts de la SEC. Toutefois, un État membre peut fixer le nombre minimal et, le cas échéant, maximal, des membres. L'organe d'administration ne peut compter parmi ses membres des membres non usagers qu'à concurrence du quart des postes à pourvoir.


4. En l'absence de dispositions relatives à un système moniste en ce qui concerne les coopératives ayant un siège statutaire sur son territoire, un État membre peut adopter les mesures appropriées concernant les SEC.

- Le Règlement donne aux États la possibilité d’introduire le système dualiste dans les États membres qui ne l’ont pas. Pensez vous faire usage de cette option ? (voir art 37§5)

**Article 47**

**Pouvoir de représentation et responsabilité de la SEC**

1. Lorsque l'exercice du pouvoir de représentation de la SEC à l'égard des tiers, conformément à l'article 37, paragraphe 1, et à l'article 42, paragraphe 1, est confié à plus d'un membre, ces membres exercent ce pouvoir à titre collectif, à moins que le droit de l'État du siège de la SEC ne permette aux statuts d'en disposer autrement, auquel cas cette clause peut être opposable aux tiers lorsqu'elle fait l'objet d'une publicité conformément à l'article 11, paragraphe 5, et à l'article 12.

- Quelle est la situation pour les sociétés relevant du droit interne ?

2. ……. Toutefois, les États membres peuvent prévoir que la SEC n'est pas engagée lorsque ces actes dépassent les limites de l'objet social de la SEC, si cette dernière prouve que le tiers savait que l'acte dépassait cet objet ou ne pouvait l'ignorer, compte tenu des circonstances, étant exclu que la seule publication des statuts suffise à constituer cette preuve.

- Quelle est la situation pour les sociétés du droit interne ? (théorie ultra vires)
- Pensez vous faire usage de cette option en prévoyant un système différent ?

4. Un État membre peut prévoir que le pouvoir de représentation de la SEC peut être attribué par les statuts à une seule personne ou à plusieurs personnes agissant conjointement. Cette législation peut prévoir l'opposabilité de cette disposition des statuts aux tiers, à condition qu'elle concerne le pouvoir général de représentation. L'opposabilité ou non d'une telle disposition aux tiers est réglée par l'article 12.

- Pensez vous faire usage de cette option ? Voir aussi articles 37§1 et 42§1 deuxièmes phrases ?

**Article 48**

**Opérations soumises à autorisation**

3. Toutefois, un État membre peut déterminer les catégories d'opérations ainsi que l'organe qui donne l'autorisation devant au minimum figurer dans les statuts des SEC immatriculées sur son
territoire et/ou prévoir que, dans le système dualiste, l'organe de surveillance peut déterminer lui-même les catégories d'opérations qui doivent être soumises à autorisation.

*Pensez vous faire usage de cette option*

**Article 50**
**Délibération des organes**

3. Lorsque la participation des travailleurs est organisée conformément à la directive 2003/72/CE, un État membre peut prévoir que le quorum et la prise de décision de l'organe de surveillance sont, par dérogation aux paragraphes 1 et 2, soumis aux règles applicables, dans les mêmes conditions, aux coopératives relevant du droit de l'État membre concerné.

*Pensez vous faire usage de cette option*

**Article 59**
**Droit de vote**

2. Lorsque la loi de l'État membre dans lequel la SEC a son siège le permet, les statuts des SEC participant à des activités dans le domaine financier ou de l'assurance peuvent prévoir que le nombre de voix est déterminé par la participation des membres aux activités exercées par la coopérative, y compris sous forme de participation au capital. Les voix ainsi attribuées ne peuvent dépasser le nombre de cinq par membre, ou 20 % du total des droits de vote, la valeur la plus faible étant retenue.

- Le règlement donne aux États l’occasion d’introduire des voix multiples selon la participation aux activités de la SEC (avec des limitations).
- Est-ce que vous avez déjà un tel système ?
- Pensez vous faire usage de cette option ?

Lorsque la loi de l'État membre dans lequel la SEC a son siège le permet, les statuts des SEC dont les membres sont majoritairement des coopératives peuvent prévoir que le nombre de voix est déterminé en fonction de la participation des membres aux activités exercées par la coopérative, y compris sous forme de participation au capital de la SEC, et/ou du nombre de membres de chaque entité constitutive.

- Le règlement donne aux États l’occasion pour les coopératives composées des coopératives d’introduire des voix multiples selon la participation aux activités et au capital de la SEC (avec les limitations).
3. En ce qui concerne les droits de vote que les statuts peuvent attribuer aux membres (investisseurs) non usagers, la SEC est régie par le droit de l'État membre dans lequel la SEC a son siège. Néanmoins, on ne peut attribuer aux non usagers (investisseurs) plus de 25 % du total des droits de vote.

- L'article 14 permet l'admission des membres investisseurs (si elle est prévue par la législation de l'État membre). La présente disposition donne ici aux États la possibilité d'accorder le droit de vote (25% au maximum) aux membres investisseurs, dans le cas ils ne l'ont pas dans leur législation.
- Avez-vous déjà une telle possibilité dans votre législation sur les coopératives ?
- Pensez-vous faire usage de cette option ?

4. Si, au moment de l'entrée en vigueur du présent règlement, la loi de l'État membre dans lequel la SEC a son siège le permet, les statuts de ladite SEC peuvent prévoir la participation de représentants des travailleurs aux assemblées générales ou aux assemblées de section ou de branche, à condition qu'ensemble, les représentants des travailleurs ne contrôlent pas plus de 15 % du total des droits de vote. Ce droit de participation cesse d'être applicable dès lors que le siège de la SEC est transféré dans un État membre dont la loi ne prévoit pas la participation des travailleurs.

- Ce régime spécifique n'est permis que si il existait avant l'entrée en vigueur du Règlement, à savoir Août 2003.
- Avez-vous déjà une telle possibilité dans votre législation sur les coopératives ?

Article 61
Prise de décision

3. Les statuts prévoient les règles de quorum et de majorité applicables aux assemblées générales. Lorsque les statuts prévoient que la SEC peut admettre des membres investisseurs (non usagers) ou attribuer les droits de vote en fonction de la contribution au capital des SEC participant à des activités dans le domaine financier ou de l'assurance, les statuts peuvent également comporter des dispositions particulières relatives au quorum à atteindre par les membres autres que les membres investisseurs (non usagers) ou les membres disposant de droits de vote en fonction de la contribution au capital des SEC participant à des activités dans le domaine financier ou de l'assurance. Les États membres sont libres de définir ce quorum pour les SEC qui ont établi leur siège sur leur territoire.

- Les État peuvent fixer un quorum particulier des membres coopérateurs normaux dans le cas où il est prévu la participation des membres investisseurs ou des membres disposant de droits de vote multiple. Cette possibilité a été conçue pour protéger les membres coopérateurs face à la participation des membres investisseurs.
- Pensez-vous faire usage de cette option ?

Article 71
Système de révision et de contrôle

Dès lors que le droit d'un État membre fait obligation à l'ensemble des sociétés coopératives, ou à un certain type de sociétés coopératives, relevant du droit de cet État d'adhérer à un organisme
extérieur légalement habilité et de se soumettre à un mode spécifique de révision et de contrôle exercé par cet organisme, ces dispositions sont de droit applicables à la SEC dont le siège statutaire est situé dans cet État membre, à condition que cet organisme réponde aux critères énoncés dans la directive 84/253/CEE.

- Est-ce que vous avez un tel système ?
OPTIONS

Options for Members States

Article 2
Formation

2. A Member State may provide that a legal body the head office of which is not in the Community may participate in the formation of an SCE provided that legal body is formed under the law of a Member State, has its registered office in that Member State and has a real and continuous link with a Member State's economy.

- The Member State may allow a legal entity, the head office of which is not the Community, to be part as a founder (or as a member) of the SCE, on the conditions foreseen in this article.
- Do you intend to make use of this option?

Article 6
Registered office

The registered office of an SCE shall be located within the Community, in the same Member State as its head office. A Member State may, in addition, impose on SCEs registered in its territory the obligation of locating the head office and the registered office in the same place.

- The Member State may impose to the SCE registered on its territory to have the head office and the registered office at the same address.
- Do you intend to make use of this option?

Article 7
Transfer of registered office

7. Before the competent authority issues the certificate mentioned in paragraph 8, the SCE shall satisfy it that, in respect of any liabilities arising prior to the publication of the transfer proposal, the interests of creditors and holders of other rights in respect of the SCE (including those of public bodies) have been adequately protected in accordance with requirements laid down by the Member State where the SCE has its registered office prior to the transfer.

A Member State may extend the application of the first subparagraph to liabilities that arise, or may arise, prior to the transfer.

- The Regulation gives the possibility to member States to extend the protection of the creditors to liabilities born before the transfer (between the date of publication of the project and the transfer).
- Do you intend to make use of this option?

The first and second subparagraphs shall apply without prejudice to the application to SCEs of the national legislation of Member States concerning the satisfaction or securing of payments to public bodies.

Do you have such a legislation favouring public entities?

14. The laws of a Member State may provide that, as regards SCEs registered in that Member State, the transfer of a registered office which would result in a change of the law applicable shall not take effect if any of that Member State's competent authorities opposes it within the
two-month period referred to in paragraph 6. Such opposition may be based only on grounds of public interest.

- The State may provide the possibility that a competent authority (for example judicial, fiscal authority) opposes to transfer of registered office in the two month period on grounds of public interest.
- Do you intend to make use of this option?

**Article 11**

**Registration and disclosure requirements**

4. The statutes of the SCE must not conflict at any time with the arrangements for employee involvement which have been so determined. Where such new arrangements determined pursuant to Directive 2003/72/EC conflict with the existing statutes, the statutes shall be amended to the extent necessary.

In this case, a Member State may provide that the management organ or the administrative organ of the SCE shall be entitled to amend the statutes without any further decision from the general meeting.

- It is a very practical rule which makes easier the respect of a legal obligation? Do you intend to make use of this option?

**Article 12**

**Publication of documents in the Member States**

2. The national rules adopted pursuant to Directive 89/666/EEC shall apply to branches of an SCE opened in a Member State other than that in which it has its registered office. However, Member States may provide for derogations from the national provisions implementing that Directive to take account of the specific features of cooperatives.

- Do you intend to make use of this option?

**Article 14**

**Acquisition of membership**

1. ..... Where the laws of the Member State of the SCE's registered office so permit, the statutes may provide that persons who do not expect to use or produce the SCE's goods and services may be admitted as investor (non-user) members. The acquisition of such membership shall be subject to approval by the general meeting or any other organ delegated to give approval by the general meeting or the statutes.

- If MS legislation allows it, the Statutes may grant admission to investor members.
- Does your legislation on co-operatives already provide such a possibility?
- Do you intend to introduce it?

**Article 21**

**Grounds for opposition to a merger**

The laws of a Member State may provide that a cooperative governed by the law of that Member State may not take part in the formation of an SCE by merger if any of that Member State's
competent authorities opposes it before the issue of the certificate referred to in Article 29(2). Such opposition may be based only on grounds of public interest. Review by a judicial authority shall be possible.

- Member State may provide that national authorities raise a veto against a projected merger on grounds of public interest. This right is in fact given to MS by the Treaty and there was no need to have a reference in the Regulation.
- Do you think useful to introduce a procedure for similar cases? Which will be the authority in charge of it? In our opinion it should be the one which proceeds to the control of the legality of internal mergers.

**Article 35**  
Procedures for formation by conversion

7. Member States may make a conversion conditional on a favourable vote of a qualified majority or unanimity in the controlling organ of the cooperative to be converted within which employee participation is organised.

- Do you intend to make use of this option?

**Article 37**  
Functions of the management organ; appointment of members

1. The management organ shall be responsible for managing the SCE and shall represent it in dealings with third parties and in legal proceedings. A Member State may provide that a managing director is responsible for the current management under the same conditions as for cooperatives that have registered offices within that Member State's territory.

- The Regulation gives the possibility to MS to provide for a manager running the SCE. In our opinion it is a very useful rule.
- Do you intend to make use of this option?

2. The member or members of the management organ shall be appointed and removed by the supervisory organ. However, a Member State may require or permit the statutes to provide that the member or members of the management organ are appointed and removed by the general meeting under the same conditions as for cooperatives that have registered offices within its territory.

- Employees’ participation rights are not affected by this option if they are represented in the supervisory organ.
- Do you intend to make use of this option?

3. No person may at the same time be a member of the management organ and of the supervisory organ of an SCE. The supervisory organ may, however, nominate one of its members to exercise the function of member of the management organ in the event of a vacancy. During such period, the functions of the person concerned as member of the supervisory organ shall be suspended. A Member State may impose a time limit on such a period.

- Do you intend to make use of this option?
4. The number of members of the management organ or the rules for determining it shall be laid down in the SCE's statutes. However, a Member State may fix a minimum and/or maximum number.

   - Do you intend to make use of this option? Which will be the minimum and/or maximum number of members

5. Where no provision is made for a two-tier system in relation to cooperatives with registered offices within its territory, a Member State may adopt the appropriate measures in relation to SCEs.

   - The Regulation gives MS the possibility to introduce the two-tier system, if they do not have it. Do you intend to make use of this option?

Article 39
Functions of the supervisory organ; appointment of members

4. The statutes shall lay down the number of members of the supervisory organ or the rules for determining it. A Member State may, however, stipulate the number of members or the composition of the supervisory organ for SCEs having their registered office in its territory or a minimum and/or a maximum number.

   - The State may fix the number of members of the supervisory organ or the rules on its composition. Do you intend to make use of this option? How, by fixing the number or the minimum and maximum. Do you have rules on composition?

Article 40
Right to information

3. The supervisory organ may require the management organ to provide information of any kind, which it needs to exercise supervision in accordance with Article 39(1). A Member State may provide that each member of the supervisory organ also be entitled to this facility.

   - Do you intend to make use of this option?

Article 42
Functions of the administrative organ; appointment of members

1. The administrative organ shall manage the SCE and shall represent it in dealings with third parties and in legal proceedings. A Member State may provide that a managing director shall be responsible for the current management under the same conditions as for cooperatives that have registered offices within that Member State's territory.

   - The Regulation gives the possibility to MS to provide for a director running the SCE. In our opinion it is a very useful rule.
   - Do you intend to make use of this option? (see article 37)

2. The number of members of the administrative organ or the rules for determining it shall be laid down in the statutes of the SCE. However, a Member State may set a minimum and, where necessary, a maximum number of members. Of the members of the administrative organ, not more than one quarter of the posts available may be filled by non-user members.
- The State may fix the number of members of the board of directors or the rules on its composition. Do you intend to make use of this option? How, by fixing the number or the minimum and maximum. Do you have rules on composition? (see art. 39§4)

4. Where no provision is made for a one-tier system in relation to cooperatives with registered offices within its territory, a MS may adopt the appropriate measures in relation to SCEs.

- The Regulation gives MS the possibility to introduce the two-tier system, if they do not have it. Do you intend to make use of this option?

**Article 47**

**Power of representation and liability of the SCE**

1. Where the authority to represent the SCE in dealings with third parties, in accordance with Articles 37(1) and 42(1), is conferred on two or more members, those members shall exercise that authority collectively, unless the law of the Member State in which the SCE's registered office is situated allows the statutes to provide otherwise, in which case such a clause may be relied upon against third parties where it has been disclosed in accordance with Articles 11(5) and 12.

- What is the law applying to national companies?

2. …

Member States may, however, provide that the SCE shall not be bound where such acts are outside the objects of the SCE, if it proves that the third party knew that the act was outside those objects or could not in the circumstances have been unaware of it; disclosure of the statutes shall not of itself be sufficient proof thereof.

- What is the law in your country? (ultra vires theory)? Do you intend to make use of this option in order to introduce a different system for SCEs?

4. A Member State may stipulate that the power to represent the SCE may be conferred by the statutes on a single person or on several persons acting jointly. Such legislation may stipulate that this provision of the statutes may be relied on as against third parties provided that it concerns the general power of representation. Whether or not such a provision may be relied on as against third parties shall be governed by the provisions of Article 12.

Do you intend to make use of this option? (see also 37§1 and 42§1 second phrases)

**Article 48**

**Operations requiring authorisation**

3. However, a Member State may determine the minimum categories of transactions and the organ which shall give the authorisation which must feature in the statutes of SCEs registered in its territory and/or provide that, under the two-tier system, the supervisory organ may itself determine which categories of transactions are to be subject to authorisation.

- Do you intend to make use of this option?
Article 50
Conduct of the business of organs

3. Where employee participation is provided for in accordance with Directive 2003/72/EC, a Member State may provide that the supervisory organ's quorum and decision-making shall, by way of derogation from the provisions referred to in paragraphs 1 and 2, be subject to the rules applicable, under the same conditions, to cooperatives governed by the law of the Member State concerned.

Do you intend to make use of this option?

Article 59
Voting rights

2. If the law of the Member State in which the SCE has its registered office so permits, the statutes may provide for a member to have a number of votes determined by his/her participation in the cooperative activity other than by way of capital contribution. This attribution shall not exceed five votes per member or 30% of total voting rights, whichever is the lower.

- The Regulation gives to the statutes the possibility to introduce multiple votes according to member’s participation to the SCE activities (with limitation). Do you have such a regime? Do you intend to make use of this option?

If the law of the Member State in which the SCE has its registered office so permits, SCEs involved in financial or insurance activities may provide in their statutes for the number of votes to be determined by the members' participation in the cooperative activity including participation in the capital of the SCE. This attribution shall not exceed five votes per member or 20% of total voting rights, whichever is the lower.

- The Regulation gives to the statutes the possibility to introduce multiple votes in banking and insurance cooperatives according to member’s participation to the SCE activities (with limitation). Do you have such a regime? Do you intend to make use of this option?

In SCEs the majority of members of which are cooperatives, if the law of the Member State in which the SCE has its registered office so permits, the statutes may provide for the number of votes to be determined in accordance with the members' participation in the cooperative activity including participation in the capital of the SCE and/or by the number of members of each comprising entity.

- The Regulation gives to the statutes the possibility to introduce multiple votes in SCEs composed by cooperatives according to member’s participation to the SCE activities (with limitation). Do you have such a regime? Do you intend to make use of this option?

3. As regards voting rights which the statutes may allocate to non-user (investor) members, the SCE shall be governed by the law of the Member State in which the SCE has its registered office. Nevertheless, non-user (investor) members may not together have voting rights amounting to more than 25% of total voting rights.
- According to art. 14 if MS legislation allows it, the Statutes may grant admission to investor members. The present provision allows MS to grant to investor members the right to vote. Does your legislation on co-operatives already provide such a possibility? Do you intend to introduce it?

4. If, on the entry into force of this Regulation, the law of the Member State where an SCE has its registered office so permits, the statutes of that SCE may provide for the participation of employees' representatives in the general meetings or in the section or sectorial meetings, provided that the employees' representatives do not together control more than 15 % of total voting rights. Such rights shall cease to apply as soon as the registered office of the SCE is transferred to a Member State whose law does not provide for such participation.

- This specific regime applies only if it existed before the entry into force the Regulation. Does your legislation on co-operatives already provide such a possibility? Do you intend to introduce it?

**Article 61**

**Decisions**

3. The statutes shall lay down the quorum and majority requirements which are to apply to general meetings. Where the statutes provide for the possibility of an SCE to admit investor (non-user) members, or to allocate votes according to capital contribution in SCEs involved in financial or insurance activities, the statutes shall also lay down special quorum requirements with relation to members other than investor (non-user) members or members that have voting rights according to capital contribution in SCEs involved in financial or insurance activities. Member States shall be free to set the minimum level of such special quorum requirements for those SCEs having their registered office in their territory.

- The State may fix a special quorum for normal members in cases the ECS has investor members or members with multiple voting rights according to capital contribution in SCEs. This possibility is designed to better protect co-operators members towards investor members.
- MS may fix the quorum. Do you intend to introduce this option it?

**Article 71**

**System of auditing**

Where the law of a Member State requires all cooperatives, or a certain type of them, covered by the law of that State to join a legally authorised external body and to submit to a specific system of auditing carried out by that body, the arrangements shall automatically apply to an SCE with its registered office in that Member State provided that this body meets the requirements of Directive 84/253/EEC.

- Does your legislation on co-operatives already provide for such a regime? Do you intend to introduce it?