



Lega Nazionale  
delle Cooperative e Mutue

## COMMENTS BY LEGACOOOP ON THE EUROPEAN COMMISSION'S CONSULTATION ON SCE

### The Organization

Founded in 1886, Legacoop, Lega Nazionale delle Cooperative e Mutue, (National League of Cooperatives and Mutuals) is the oldest Italian cooperative organization.

Legacoop promotes the development of cooperation and mutuality, the economic and solidarity relations of its member cooperatives and encourages the spread of cooperative principles and values.

The more than 15,000 cooperatives belonging to Legacoop are present in all regions and productive sectors. They can be found in leading positions in sectors such as retailing, construction, agro-food, services and manufacturing. Member cooperatives have also created important companies in the insurance, finance and credit sectors.

Legacoop carries out a role of representation, assistance and protection in the cooperative movement. It also acts as the control and supervision body for its member cooperatives; it guarantees the coordination and orientation of strategies and policies; and it establishes and manages relations with the government, the ministries and relevant parliamentary commissions, and the political, economic and social forces.

Legacoop's responsibility also involves preparing the legal issues regarding cooperatives, agreed on with the sector and territorial representatives, and undertaking the necessary initiatives for their approval.

Legacoop also coordinates international relations for the member cooperatives, relations with European Union institutions and the management of cooperative industrial relations, also providing support to the various sectors.

Legacoop is member of the International Cooperative Alliance and Cooperatives Europe, the largest European cooperative representative body.

Constitution of the Italian Republic Article 45: "The Republic recognizes the social role of cooperation unique in its mutuality and non-profit motivation.

The law promotes and encourages its growth by the most suitable means and assures, with the appropriate controls, its uniqueness and mutuality.”

### **COMMENTS ON TABLE 1**

#### ***Articles regulating issues that are common to the SCE and SE Regulation***

##### **Item 1**

It is useful and opportune to foster the possibility that a legal body, the head office of which is not in the Community, may participate in a SCE or SE.

The only condition to be proposed could be that this legal body should have at least a stable running business in the territory of a Member State. For instance, this condition is provided by the Italian law (law n.122/2010) in order to enable a foreign enterprise to participate in “business network contracts”.

##### **Item 2 and 3**

We consider opportune not to modify the articles under review, also for the strong implications that the choice of the registered office implies in terms of fiscal regime.

##### **Item 4**

In theory, the hierarchy of legal sources is correct, but in the body of Regulations it is necessary to modify their weight, such as the one concerning the referring to the national law of individual Member States.

##### **Items 5, 6 and 7**

We consider opportune not to modify the article under review.<sup>1</sup>

##### **Item 8**

Article 37, paragraph 3, could be revised in this way: the period in which a member of the supervisory board stands in for a vacant member of the Management Organ should have a time limit, expiring

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<sup>1</sup> In the Consultation document, item 5, the reference to the article 10 of the SCE Regulation should be replaced with article 16.

when the Assembly approves the budget. In such a way, the competence of every individual Member State to regulate the issue is excluded.

Article 37, paragraph 4, can be revised considering only the minimum number of members of the Management Organ and abolishing the second sentence which gives the possibility to the State to establish the minimum and maximum number of this Organ.

#### **Item 9**

Concerning the first issue, our comment is provided in item 2.

Concerning the second issue, in principle we are favorable, but it is necessary to consider every single issue for which attribute to SCE more autonomy.

### **COMMENTS ON TABLE 2**

#### ***References to plc law***

#### **Item 10**

We are favorable to the amendment, even if in Italy the normative of the Civil Code devoted to cooperatives refers to the one about PLC. Nevertheless, in other member States there could be special laws that should be safeguarded.

#### **Item 11**

We are favorable to the amendment, even if in Italy the Civil Code devoted to co-operatives refers to the one about PLC. Nevertheless, in other member States there could be special laws that should be safeguarded.

#### **Item 12**

We are favorable to the amendment.

#### **Item 13**

We are favorable to the amendment, and we also propose an integration. The amendment should be as follows: "*and/or to cooperatives if it is equivalent*".

In fact, in Italy, beyond the Register of Enterprises, there is also the National Register of Co-operatives, in which co-operatives have to be registered.

**Item 14**

See proposal item 13.

**Item 15**

See proposal item 13.

**Item 16**

The reference is necessary. Also in Italy, provisions of the law concerning merger are provided in the Civil Code section devoted to PLC, to which the law concerning co-operatives is referred.

**Item 17**

The reference is necessary.

**Item 18**

The reference is necessary.

**Item 19**

The reference is necessary.<sup>2</sup>

**Item 21**

The reference is necessary.

**Item 22**

The reference is necessary.

**Item 23**

The reference is necessary.

**Item 24**

The reference is necessary.

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<sup>2</sup> Item 20 is missing.

### COMMENTS ON TABLE 3

#### *Cooperative specific options for MS and specific references to national cooperative legislation*

##### **Item 25**

The reference is necessary.

##### **Item 26**

The reference is necessary.

##### **Item 27**

The reference is not necessary. It could be useful to avoid that the presence of investor members in the SCE could be conditional on the explicit normative provision of the Member State in which the SCE itself has placed its registered office. In fact, transnational activities need financial resources which co-operative members do not own. Moreover, it should be said that now in the majority of Member States there are laws which allow the presence of investor members in co-operatives.

##### **Item 28**

The reference is not necessary. Moreover, a condition of iniquity could happen, due to the fact that some members of the SCE should be subject to situations of loss of membership which do not exist in their countries.

##### **Item 29**

The reference is necessary.

##### **Item 30**

The reference is necessary.

##### **Item 31**

The reference is not necessary. It is one of cases where it is possible to leave to the statutory autonomy of SCE to choose between the option of the supervisory organ and the one of the general meeting.

##### **Item 32**

The reference is not necessary. The presence or not of a company as cooperative member of the SCE depends on the mutualistic aim of the SCE itself. It is clear that in case of worker co-operatives, the SCE

cannot have companies as co-operative members. In case, the company could become an investor member.

**Item 33**

The reference is not necessary.

**Item 34**

The reference is useful

**Item 35**

The reference is useful.

**Item 36, 37, 38, 39 and 40**

References can be useful, but it would be opportune to eliminate the hypothesis to attribute multiple votes to co-operative members in relation to their participation in the capital of the SCE. In fact, this kind of attribution is definitely far from co-operative tradition.

**Item 41**

The reference is not necessary. It regards a freedom of choice leaved to SCE members. It is enough that conditions for convening sectorial or section meetings have been identified.

**Item 42**

The reference is necessary.

**Item 43**

The reference is necessary.