

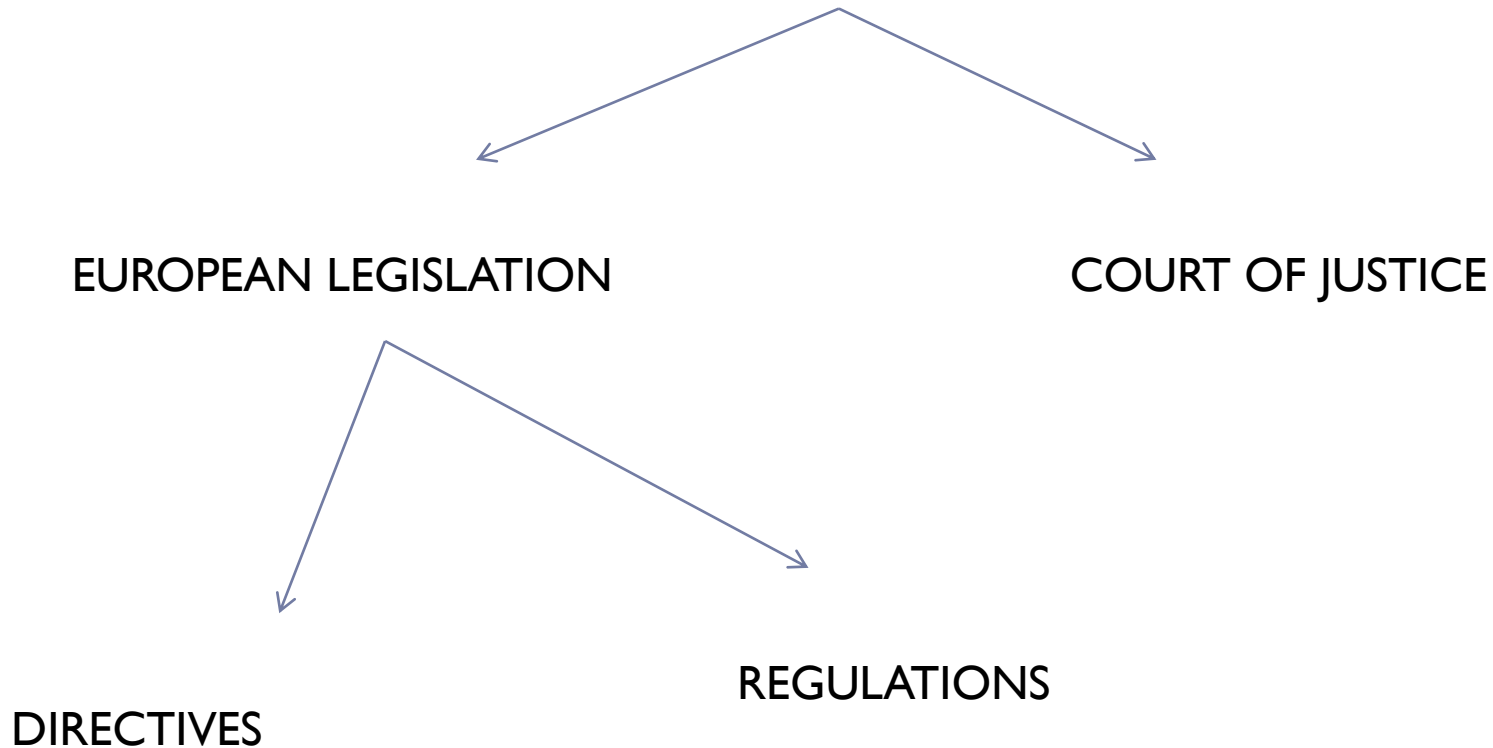


EUROPEAN COMPANY LAW



EEIG – SE – SCE

EUROPEAN COMPANY LAW



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SOVEREIGNTY

- ▶ **approximation of laws**
- ▶ ***freedom of establishment***

harmonisation

LEGISLATION

► BASIS

- Article 50 TFEU (ex Article 44 TEC): *In order to attain **freedom of establishment** as regards a particular activity, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, shall act by means of directives ...*
- Article 54 TFEU (ex Article 48 TEC): *Companies or firms formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the Union shall, for the purposes of this Chapter, be treated in the same way as natural persons who are nationals of Member States*
- Article 352 TFEU (ex Article 308 TEC) : s.c. flexibility clause

European Economic Interest Grouping

- ▶ **COUNCIL REGULATION (EEC) No 2137/85 of 25 July 1985 on the European Economic Interest Grouping (EEIG)**
- ▶ D.lgs. N. 240/1991

Whereas:

- ▶ a harmonious development of economic activities and a continuous and balanced expansion throughout the Community^(Union) depend on the establishment and smooth functioning of a common market offering conditions analogous to those of a national market; whereas to bring about this single market and to increase its unity a legal framework which facilitates the adaptation of their activities to the economic conditions of the Community should be created for natural persons, companies, firms and other legal bodies in particular ; whereas to that end it is necessary that those natural persons, companies, firms and other legal bodies should be able to cooperate effectively across frontiers

Whereas:

- ▶ a grouping's ability to adapt to economic conditions must be guaranteed by the considerable freedom for its members in their contractual relations and the internal organization of the grouping ; Whereas a grouping differs from a firm or company principally in its purpose, which is only to facilitate or develop the economic activities of its members to enable them to improve their own results ; whereas, by reason of that ancillary nature, a grouping's activities must be related to the economic activities of its members but not replace them

Whereas:

- ▶ Access to grouping form must be made as widely available as possible to natural persons, companies, firms and other legal bodies
- ▶ The protection of third parties requires widespread publicity;
- ▶ the members of a grouping have unlimited joint and several liability for the grouping's debts and other liabilities

► Incorporation

- Contract + registration in the State in which it has its official address+notice given in the Official Journal of the European Union
- A grouping so formed shall, from the date of its registration as provided for in Article 6, have the capacity, in its own name, to have rights and obligations of all kinds, to make contracts or accomplish other legal acts, and to sue and be sued
- State of the official address: the law applicable, on the one hand, to the contract for the formation of a grouping, except as regards matters relating to the status or capacity of natural persons and to the capacity of legal persons and, on the other hand, to the internal organization of a grouping

PURPOSE

- ▶ to facilitate or develop the economic activities of its members and to improve or increase the results of those activities ; its purpose is not to make profits for itself.
- ▶ Its activity shall be related to the economic activities of its members and must not be more than ancillary to those activities

a grouping may not :

- ▶ (a) exercise, directly or indirectly, a power of management or supervision over its members' own activities or over the activities of another undertaking, in particular in the fields of personnel, finance and investment ;
- ▶ (b) directly or indirectly, on any basis whatsoever, hold shares of any kind in a member undertaking ; the holding of shares in another undertaking shall be possible only in so far as it is necessary for the achievement of the grouping's objects and if it is done on its members' behalf ;
- ▶ (c) employ more than 500 persons ;
- ▶ (d) be used by a company to make a loan to a director of a company, or any person connected with him, when the making of such loans is restricted or controlled under the Member States' laws governing companies. Nor must a grouping be used for the transfer of any property between a company and a director, or any person connected with him, except to the extent allowed by the Member States' laws governing companies. For the purposes of this provision the making of a loan includes entering into any transaction or arrangement of similar effect, and property includes moveable and immoveable property ;
- ▶ (e) be a member of another European Economic Interest Grouping.

MEMBERS:

- ▶ (a) companies or firms within the meaning of the second paragraph of Article 58 of the Treaty and other legal bodies governed by public or private law, which have been formed in accordance with the law of a Member State and which have their registered or statutory office and central administration in the Community
- ▶ (b) natural persons who carry on any industrial, commercial, craft or agricultural activity or who provide professional or other services in the Community
- ▶ AT LEAST OF 2 DIFFERENT MEMBER STATES

CONTRACT

- ▶ **Minimum content**
- ▶ **Should be filed in the register with some documents:**
 - ▶ (a) any amendment to the contract
 - ▶ (b) notice of the setting up or closure of any establishment of the grouping ;
 - ▶ (c) any judicial decision establishing or declaring the nullity of a grouping
 - ▶ (d) notice of the appointment of the manager or managers of a grouping
 - ▶ (e) notice of a member's assignment of his participation in a grouping or a proportion thereof
 - ▶ (f) any decision by members ordering or establishing the winding up
 - ▶ (g) notice of the appointment of the liquidator or liquidators
 - ▶ (h) notice of the conclusion of a grouping's liquidation,
 - ▶ (i) any proposal to transfer the official address
 - ▶ (j) any clause exempting a new member from the payment of debts and other liabilities which originated prior to his admission

Official address

- ▶ The official address must be fixed either :
 - ▶ (a) where the grouping has its central administration,
 - ▶ or
 - ▶ (b) where one of the members of the grouping has its central administration or, in the case of a natural person, his principal activity, provided that the grouping carries on an activity there

- ▶ may be transferred within the Community
 - ▶ When the transfer of the official address results in a change in the law applicable pursuant to Article 2, a transfer proposal must be drawn up, filed and published

MANAGEMENT

- ▶ The organs of a grouping shall be the members acting collectively and the manager or managers.
- ▶ A contract for the formation of a grouping may provide for other organs ; if it does it shall determine their powers.
- ▶ The members of a grouping, acting as a body, may take any decision for the purpose of achieving the objects of the grouping
- ▶ A grouping shall be managed by one or more natural persons appointed in the contract for the formation of the grouping or by decision of the members

REPRESENTATIVE POWER

- ▶ Only the manager or, where there are two or more, each of the managers shall represent a grouping in respect of dealings with third parties. Each of the managers shall bind the grouping as regards third parties when he acts on behalf of the grouping, even where his acts do not fall within the objects of the grouping, unless the grouping proves that the third party knew or could not, under the circumstances, have been unaware that the act fell outside the objects of the grouping
- ▶ No limitation on the powers of the manager or managers, whether deriving from the contract for the formation of the grouping or from a decision by the members, may be relied on as against third parties even if it is published
- ▶ The contract for the formation of the grouping may provide that the grouping shall be validly bound only by two or more managers acting jointly

MEETING

- ▶ Each member shall have one vote. The contract for the formation of a grouping may, however, give more than one vote to certain members, provided that no one member holds a majority of the votes
- ▶ A unanimous decision by the members shall be required to approve some resolutions (alter the object, alter the number of votes, etc.)

PROFITS

- ▶ The profits resulting from a grouping's activities shall be deemed to be the profits of the members and shall be apportioned among them in the proportions laid down in the contract for the formation of the grouping or, in the absence of any such provision, in equal shares

LIABILITY

- ▶ The members of a grouping shall have unlimited joint and several liability for its debts and other liabilities of whatever nature . National law shall determine the consequences of such liability.
- ▶ Creditors may not proceed against a member for payment in respect of debts and other liabilities, in accordance with the conditions laid down in paragraph 1 , before the liquidation of a grouping is concluded, unless they have first requested the grouping to pay and payment has not been made within an appropriate period.

TRANSFER

- ▶ Any member of a grouping may assign his participation in the grouping, or a proportion thereof, either to another member or to a third party ; the assignment shall not take effect without the unanimous authorization of the other members
- ▶ A decision to admit new members shall be taken unanimously by the members of the grouping. Every new member shall be liable, in accordance with the conditions laid down in Article 24, for the grouping's debts and other liabilities, including those arising out of the grouping's activities before his admission

TERMINATION OF THE PARTICIPATION

▶ WITHDRAWAL

- ▶ conditions laid down in the contract for the formation of a grouping
- ▶ unanimous agreement of the other members
- ▶ just and proper grounds

▶ EXCLUSION

- ▶ the reasons listed in the contract for the formation of the grouping and, in any case, if he seriously fails in his obligations or if he causes or threatens to cause serious disruption in the operation of the grouping

▶ DEATH

- ▶ no continuation unless unanimous consent

WINDING-UP

- ▶ Agreement
- ▶ Decision of the members
 - ▶ Term expiry
 - ▶ noting the accomplishment of the grouping's purpose or the impossibility of pursuing it further
- ▶ Court
 - ▶ Infringements
 - ▶ Just and proper grounds
- ▶ Member State
 - ▶ Public interest
- ▶ LIQUIDATION

EUROPEAN COMPANY – SE (SOCIETAS EUROPAEA)

- ▶ Council Regulation (EC) No 2157/2001
 - ▶ DIRECTIVE 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees
- ▶ SE with registered office in Italy
- ▶ LAW APPLICABLE
 - ▶ Reg. 2157/2001
 - ▶ D.lgs. 188/2005 (implementation of COUNCIL DIRECTIVE 2001/86/EC)
 - ▶ Italian law
 - ▶ By-laws

An SE shall be governed:

- ▶ (a) by this Regulation,
- ▶ (b) where expressly authorised by this Regulation, by the provisions of its statutes
- ▶ or
- ▶ (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 provisions of laws adopted by Member States in implementation of Community measures relating specifically to SEs;
 - ▶ (ii) the provisions of Member States' laws which would apply to a public limited-liability company formed in accordance with the law of the Member State in which the SE has its registered office;
 - ▶ (iii) the provisions of its statutes, in the same way as for a public limited-liability company formed in accordance with the law of the Member State in which the SE has its registered office

Whereas:

- ▶ The completion of the internal market and the improvement it brings about in the economic and social situation throughout the Community mean not only that barriers to trade must be removed, but also that the structures of production must be adapted to the Community dimension. For that purpose it is essential that companies the business of which is not limited to satisfying purely local needs should be able to plan and carry out the reorganisation of their business on a Community scale.
- ▶ Such reorganisation presupposes that existing companies from different Member States are given the option of combining their potential by means of mergers

Whereas:

- ▶ legal and psychological difficulties and tax problems
- ▶ The legal framework within which business must be carried on in the Community is still based largely on national laws and therefore no longer corresponds to the economic framework within which it must develop if the objectives set out in Article 18 of the Treaty are to be achieved. That situation forms a considerable obstacle to the creation of groups of companies from different Member States.
- ▶ ensure as far as possible that the economic unit and the legal unit of business in the Community coincide.

Whereas:

- ▶ The provisions of such a Regulation will permit the creation and management of companies with a European dimension, free from the obstacles arising from the disparity and the limited territorial application of national company law.
- ▶ The SE itself must take the form of a company with share capital, that being the form most suited, in terms of both financing and management, to the needs of a company carrying on business on a European scale. In order to ensure that such companies are of reasonable size, a minimum amount of capital should be set so that they have sufficient assets without making it difficult for small and medium-sized undertakings to form SEs

Whereas:

- ▶ An SE must be efficiently managed and properly supervised. It must be borne in mind that there are at present in the Community two different systems for the administration of public limited-liability companies. Although an SE should be allowed to choose between the two systems, the respective responsibilities of those responsible for management and those responsible for supervision should be clearly defined
- ▶ This Regulation does not cover other areas of law such as taxation, competition, intellectual property or insolvency

Whereas:

- ▶ The SE should be enabled to transfer its registered office to another Member State. Adequate protection of the interests of minority shareholders who oppose the transfer, of creditors and of holders of other rights should be proportionate. Such transfer should not affect the rights originating before the transfer.
- ▶ In view of the specific Community character of an SE, the 'real seat' arrangement adopted by this Regulation in respect of SEs is without prejudice to Member States' laws and does not pre-empt any choices to be made for other Community texts on company law.

General remarks

- ▶ public limited-liability company governed by the law of the Member State in which it has its registered office
- ▶ legal personality

FORMATION

- ▶ MERGER
- ▶ HOLDING
- ▶ SUBSIDIARY (TWO HYPOTHESIS)
- ▶ TRANSFORMATION

MERGER

- ▶ A merger carried out as laid down in Article 17(2)(a) [ACQUIRING COMPANY] shall have the following consequences ipso jure and simultaneously:
 - ▶ (a) all the assets and liabilities of each company being acquired are transferred to the acquiring company;
 - ▶ (b) the shareholders of the company being acquired become shareholders of the acquiring company;
 - ▶ (c) the company being acquired ceases to exist;
 - ▶ (d) the acquiring company adopts the form of an SE.
- ▶ 2. A merger carried out as laid down in Article 17(2)(b) [NEW COMPANY] shall have the following consequences ipso jure and simultaneously:
 - ▶ (a) all the assets and liabilities of the merging companies are transferred to the SE;
 - ▶ (b) the shareholders of the merging companies become shareholders of the SE;
 - ▶ (c) the merging companies cease to exist

MERGER

- ▶ The general meeting of each of the merging companies shall approve the draft terms of merger
- ▶ A merger as provided for in Article 2(1) may not be declared null and void once the SE has been registered.
- ▶ The absence of scrutiny of the legality of the merger pursuant to Articles 25 and 26 may be included among the grounds for the winding-up of the SE

HOLDING

- ▶ A company promoting the formation of a holding SE shall continue to exist
- ▶ The management or administrative organs of the companies which promote such an operation shall draw up draft terms for the formation of the holding SE.
- ▶ Independent experts shall examine the draft terms of formation drawn up
- ▶ The general meeting of each company promoting the operation shall approve the draft terms of formation of the holding SE
- ▶ [EX. Porsche Automobil Holding SE]

SUBSIDIARY

▶ 1°

- ▶ Companies, firms and other legal entities participating in such an operation shall be subject to the provisions governing their participation in the formation of a subsidiary in the form of a public limited-liability company under national law

▶ 2nd

- ▶ An SE may itself set up one or more subsidiaries in the form of SEs

TRANSFORMATION

- ▶ Conversion of an existing public limited-liability company into an SE
- ▶ shall not result in the winding up of the company or in the creation of a new legal person
- ▶ The management or administrative organ of the company in question shall draw up draft terms of conversion and a report explaining and justifying the legal and economic aspects of the conversion and indicating the implications
- ▶ independent experts
- ▶ The general meeting of the company in question shall approve the draft terms of conversion together with the statutes of the SE

MEMBERS

- ▶ [merger]
 - ▶ at least two of them are governed by the law of different Member States
- ▶ [transformation]
 - ▶ if for at least two years it has had a subsidiary company governed by the law of another Member State
- ▶ [Holding/Subsidiary] at least two of them:
 - ▶ (a) is governed by the law of a different Member State, or
 - ▶ (b) has for at least two years had a subsidiary company governed by the law of another Member State or a branch situated in another Member State.

Capital

- ▶ Shares
 - ▶ Euro
 - ▶ Subscribed capital shall not be less than EUR 120 000
-
- ▶ shall be governed by the provisions which would apply to a public limited-liability company with a registered office in the Member State in which the SE is registered

Registered office

- ▶ The registered office of an SE shall be located within the Community, in the same Member State as its head office
- ▶ may be transferred to another Member State; such a transfer shall not result in the winding up of the SE or in the creation of a new legal person
 - ▶ Transfer proposal+report by the managerial organ
 - ▶ General meeting
 - ▶ Verification

Registration/Negotiation

- ▶ Every SE 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
- ▶ An SE may not be registered unless an agreement on arrangements for employee involvement pursuant to Article 4 of Directive 2001/86/EC has been concluded, or a decision pursuant to Article 3(6) of the Directive has been taken, or the period for negotiations pursuant to Article 5 of the Directive has expired without an agreement having been concluded

Involvement of employees

- ▶ **COUNCIL DIRECTIVE 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees**
- ▶ Employees participation – “before and after principle”
- ▶ Negotiating procedure

STRUCTURE

- ▶ a) a general meeting of shareholders and
- ▶ b) either a supervisory organ and a management organ (two-tier system) or an administrative organ (one-tier system) depending on the form adopted in the statutes.

TWO-TIER SYSTEM

▶ MANAGEMENT ORGAN

- ▶ The management organ shall be responsible for managing the SE
- ▶ The member or members of the management organ shall be appointed and removed by the supervisory organ
- ▶ No person may at the same time be a member of both the management organ and the supervisory organ of the same SE

TWO-TIER SYSTEM

▶ SUPERVISORY ORGAN

- ▶ shall supervise the work of the management organ. It may not itself exercise the power to manage the SE
- ▶ The members of the supervisory organ shall be appointed by the general meeting. The members of the first supervisory organ may, however, be appointed by the statutes.

TWO-TIER SYSTEM

- ▶ The management organ shall report to the supervisory organ at least once every three months on the progress and foreseeable development of the SE's business
- ▶ the management organ shall promptly pass the supervisory organ any information on events likely to have an appreciable effect on the SE.
- ▶ The supervisory organ may require the management organ to provide information of any kind which it needs to exercise supervision
- ▶ The supervisory organ may undertake or arrange for any investigations necessary for the performance of its duties.
- ▶ Each member of the supervisory organ shall be entitled to examine all information submitted to it.

ONE-TIER SYSTEM

- ▶ The administrative organ shall manage the SE.
- ▶ The member or members of the administrative organ shall be appointed by the general meeting
- ▶ The management organ shall meet at least once every three months at intervals laid down by the statutes to discuss the progress and foreseeable development of the SE's business.
- ▶ Each member of the administrative organ shall be entitled to examine all information submitted to it

COMMON RULES

- ▶ Members of company organs shall be appointed for a period laid down in the statutes not exceeding six years
- ▶ members may be reappointed once or more than once
- ▶ An SE's statutes may permit a company or other legal entity to be a member of one of its organs requirements (not disqualified)

▶ MAJORITY RULE:

- ▶ internal rules relating to quorums and decision-taking in SE organs shall be as follows:
 - ▶ (a) quorum: at least half of the members must be present or represented;
 - ▶ (b) decision-taking: a majority of the members present or represented

LIABILITY

- ▶ Members of an SE's management, supervisory and administrative organs shall be liable, in accordance with the provisions applicable to public limited-liability companies in the Member State in which the SE's registered office is situated, for loss or damage sustained by the SE following any breach on their part of the legal, statutory or other obligations inherent in their duties

GENERAL MEETING

- ▶ the organisation and conduct of general meetings together with voting procedures shall be governed by the law applicable to public limited-liability companies in the Member State in which the SE's registered office is situated
- ▶ An SE shall hold a general meeting at least once each calendar year, within six months of the end of its financial year
- ▶ General meetings may be convened at any time by the management organ, the administrative organ, the supervisory organ or any other organ or competent authority in accordance with the national law applicable to public limited-liability companies in the Member State in which the SE's registered office is situated

MINORITY SHAREHOLDERS

- ▶ One or more shareholders who together hold at least 10 % of an SE's subscribed capital may request the SE to convene a general meeting and draw up the agenda therefor
- ▶ One or more shareholders who together hold at least 10 % of an SE's subscribed capital may request that one or more additional items be put on the agenda of any general meeting
- ▶ The votes cast shall not include votes attaching to shares in respect of which the shareholder has not taken part in the vote or has abstained or has returned a blank or spoilt ballot paper

-
- ▶ Amendment of an SE's statutes shall require a decision by the general meeting taken by a majority which may not be less than two thirds of the votes cast
 - ▶ Where an SE has two or more classes of shares, every decision by the general meeting shall be subject to a separate vote by each class of shareholders whose class rights are affected thereby

European Cooperative Society (SCE)

- ▶ **COUNCIL REGULATION (EC) No 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE)**
- ▶ Principal object: satisfaction of its member's needs and/or the development of their economic and/or social activities
- ▶ Mutual benefit of the members
- ▶ Variable capital

Whereas:

- ▶ The completion of the internal market and the improvement it brings about in the economic and social situation throughout the Community mean not only that barriers to trade should be removed, but also that the structures of production should be adapted to the Community dimension. For that purpose it is essential that companies of all types the business of which is not limited to satisfying purely local needs should be able to plan and carry out the reorganisation of their business on a Community scale
- ▶ The legal framework within which business should be carried on in the Community is still based largely on national laws and therefore does not correspond to the economic framework within which it should develop if the objectives set out in Article 18 of the Treaty are to be achieved

Whereas

- ▶ The legal form of the European Company (SE), according to the general principles of the public limited-liability company, is not an instrument which is suited to the specific features of cooperatives.
- ▶ The European Economic Interest Grouping (EEIG) allows undertakings to promote certain of their activities in common, while nevertheless preserving their independence, but does not meet the specific requirements of cooperative enterprise.

Whereas

- ▶ The Community, anxious to ensure equal terms of competition and to contribute to its economic development, should provide cooperatives, which are a form of organisation generally recognised in all Member States, with adequate legal instruments capable of facilitating the development of their cross-border activities

Whereas

- ▶ Cooperatives are primarily groups of persons or legal entities with particular operating principles that are different from those of other economic agents. These include the principles of democratic structure and control and the distribution of the net profit for the financial year on an equitable basis.
- ▶ These particular principles include notably the principle of the primacy of the individual which is reflected in the specific rules on membership, resignation and expulsion, where the 'one man, one vote' rule is laid down and the right to vote is vested in the individual, with the implication that members cannot exercise any rights over the assets of the cooperative.

Whereas

- ▶ Cooperatives have a share capital and their members may be either individuals or enterprises. These members may consist wholly or partly of customers, employees or suppliers. Where a cooperative is constituted of members who are themselves cooperative enterprises, it is known as a 'secondary' or 'seconddegree' cooperative. In some circumstances cooperatives may also have among their members a specified proportion of investor members who do not use their services, or of third parties who benefit by their activities or carry out work on their behalf.

Whereas

- ▶ A European cooperative society (hereinafter referred to as 'SCE') should have as its principal object the satisfaction of its members' needs and/or the development of their economic and/or social activities, in compliance with the following principles:
 - its activities should be conducted for the mutual benefit of the members so that each member benefits from the activities of the SCE in accordance with his/her participation,
 - members of the SCE should also be customers, employees or suppliers or should be otherwise involved in the activities of the SCE,
 - control should be vested equally in members, although weighted voting may be allowed, in order to reflect each member's contribution to the SCE,
 - there should be limited interest on loan and share capital,
 - profits should be distributed according to business done with the SCE or retained to meet the needs of members,
 - there should be no artificial restrictions on membership,
 - net assets and reserves should be distributed on winding-up according to the principle of disinterested distribution, that is to say to another cooperative body pursuing similar aims or general interest purposes

Whereas

- ▶ The essential aim of this Regulation is to enable the establishment of an SCE by physical persons resident in different Member States or legal entities established under the laws of different Member States. It will also make possible the establishment of an SCE by merger of two existing cooperatives, or by conversion of a national cooperative into the new form without first being wound up, where that cooperative has its registered office and head office within one Member State and an establishment or subsidiary in another Member State
- ▶ the 'real seat' arrangement adopted by this Regulation in respect of SCEs is without prejudice to Member States' laws and does not preempt the choices to be made for other Community texts on company law

General remarks

- ▶ The subscribed capital of an SCE shall be divided into shares.
- ▶ The number of members and the capital of an SCE shall be variable.
- ▶ Unless otherwise provided by the statutes of the SCE when that SCE is formed, no member shall be liable for more than the amount he/she has subscribed
- ▶ An SCE shall have legal personality

Law applicable:

An SCE shall be governed:

- ▶ (a) by this Regulation;
- ▶ (b) where expressly authorised by this Regulation, by the provisions of its statutes;
- ▶ (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

Purpose

- ▶ satisfaction of its members' needs and/or the development of their economic and social activities, in particular through the conclusion of agreements with them to supply goods or services or to execute work of the kind that the SCE carries out or commissions.
- ▶ satisfaction of its members' needs by promoting their participation in economic activities, in one or more SCEs and/or national cooperatives

Formation

- ▶ by five or more natural persons resident in at least two Member States
- ▶ by five or more natural persons and companies and firms resident in, or governed by the law of, at least two different Member States
- ▶ by companies and firms 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 it has had an establishment or subsidiary governed by the law of another Member State

Formation

▶ MERGER

1. by acquisition
 2. by the formation of a new legal person
-
- ▶ The management or administrative organ of merging cooperatives shall draw up draft terms of merger
 - ▶ shall draw up a detailed written report explaining and justifying the draft terms of merger from a legal and economic viewpoint and in particular the share-exchange ratio
 - ▶ publication of the draft
 - ▶ Report of the experts
 - ▶ general meeting to decide upon the merger
 - ▶ scrutiny

▶ **Merger (1) effects:**

- ▶ (a) all the assets and liabilities of each cooperative being acquired are transferred to the acquiring legal person;
- ▶ (b) the members of each cooperative being acquired become members of the acquiring legal person;
- ▶ (c) the cooperatives being acquired cease to exist;
- ▶ (d) the acquiring legal person assumes the form of an SCE.

▶ **Merger (2) effects:**

- ▶ (a) all the assets and liabilities of the merging cooperatives are transferred to the SCE;
- ▶ (b) the members of the merging cooperatives become members of the SCE;
- ▶ (c) the merging cooperatives cease to exist.

Formation

- ▶ Conversion of an existing cooperative into a SCE
 - ▶ shall not result in the winding-up of the cooperative or in the creation of a new legal person
 - ▶ The administrative or management organ of the cooperative in question shall draw up draft terms of conversion and a report explaining and justifying the legal and economic aspects as well as the employment effects of the conversion and indicating the implications
 - ▶ Publicity
 - ▶ Experts' report
 - ▶ General meeting

Capital

- ▶ not less than EUR 30 000
- ▶ Variations in the amount of the capital shall not require amendment of the statutes or disclosure
- ▶ The subscribed capital of an SCE shall be represented by the members' shares, expressed in the national currency
- ▶ The capital may be formed only of assets capable of economic assessment. Members' shares may not be issued for an undertaking to perform work or supply services

Statute (minimum content)

- ▶ the name of the SCE, preceded or followed by the abbreviation 'SCE' and, where appropriate, the word 'limited',
- ▶ a statement of the objects,
- ▶ the names of the natural persons and the names of the entities which are founder members of the SCE, indicating their objects and registered offices in the latter case,
- ▶ the address of the SCE's registered office,
- ▶ the conditions and procedures for the admission, expulsion and resignation of members,
- ▶ the rights and obligations of members, and the different categories of member, if any, and the rights and obligations of members in each category,
- ▶ the nominal value of the subscribed shares, the amount of the subscribed capital, and an indication that the capital is variable,
- ▶ specific rules concerning the amount to be allocated from the surplus, where appropriate, to the legal reserve,
- ▶ the powers and responsibilities of the members of each of the governing organs,
- ▶ provisions governing the appointment and removal of the members of the governing organs,
- ▶ the majority and quorum requirements,
- ▶ the duration of the existence of the society, where this is of limited duration.

Registered office/registration

- ▶ The registered office of an SCE shall be located within the Community, in the same Member State as its head office
- ▶ may be transferred to another Member State but such transfer shall not result in the winding-up of the SCE or in the creation of a new legal person
 - ▶ The management or administrative organ shall draw up a transfer proposal and publicise it
 - ▶ shall draw up a report explaining and justifying the legal and economic aspects as well as the employment effects of the transfer and explaining the implications of the transfer
 - ▶ general meeting called to decide on the transfer
- ▶ Every SCE shall be registered in the Member State in which it has its registered office

Structure

- ▶ (a) a general meeting;
and
- ▶ (b) either a supervisory organ and a management organ (two-tier system) or an administrative organ (one-tier system) depending on the form adopted in the statutes.

Two-tier system

MANAGEMENT ORGAN

- ▶ The management organ shall be responsible for managing the SCE and shall represent it in dealings with third parties and in legal proceedings
- ▶ The member or members of the management organ shall be appointed and removed by the supervisory organ
- ▶ No person may at the same time be a member of the management organ and of the supervisory organ of an SCE

Two-tier system

▶ SUPERVISORY ORGAN

- ▶ It shall supervise the duties performed by the management organ.
- ▶ It may not itself exercise the power to manage the SCE.
- ▶ It may not represent the SCE in dealings with third parties
- ▶ The members of the supervisory organ shall be appointed and removed by the general meeting

Two-tier system

- ▶ The management organ shall report to the supervisory organ at least once every three months on the progress and foreseeable developments of the SCE's business
- ▶ the management organ shall promptly communicate to the supervisory organ any information on events likely to have an appreciable effect on the SCE
- ▶ The supervisory organ may require the management organ to provide information of any kind, which it needs to exercise supervision
- ▶ The supervisory organ may undertake or arrange for any investigations necessary for the performance of its duties.
- ▶ Each member of the supervisory organ shall be entitled to examine all information submitted to it

One-tier system

- ▶ The administrative organ shall manage the SCE and shall represent it in dealings with third parties and in legal proceedings
- ▶ They shall be appointed by the general meeting
- ▶ The administrative organ shall meet at least once every three months, at intervals laid down in the statutes, to discuss the progress of and foreseeable development of the SCE's business
- ▶ Each member of the administrative organ shall be entitled to examine all reports, documents and information submitted to it.

Common rules (one/two-tier)

- ▶ Members of SCE organs shall be appointed for a period laid down in the statutes not exceeding six years
- ▶ members may be re-appointed once or more than once
- ▶ An SCE's statutes may permit a company or other legal entity to be a member of one of its organs requirements (not disqualified)
- ▶ The internal rules relating to quorums and decision-taking in SCE organs shall be as follows:
 - ▶ (a) quorum: at least half of the members with voting rights must be present or represented;
 - ▶ (b) decision-taking: a majority of the members with voting rights present or represented

Representation power

- ▶ Acts performed by an SCE's organs shall bind the SCE vis-à-vis third parties, even where the acts in question are not in accordance with the objects of the SCE, providing they do not exceed the powers conferred on them by the law of the Member State in which the SCE has its registered office or which that law allows to be conferred on them. 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. The limits on the powers of the organs of the SCE, arising under the statutes or from a decision of the competent organs, may never be relied on as against third parties, even if they have been disclosed

Authorisation

- ▶ An SCE's statutes shall list the categories of transactions requiring:
 - under the two-tier system, authorisation from the supervisory organ or the general meeting to the management organ,
 - under the one-tier system, an express decision adopted by the administrative organ or authorisation from the general meeting

Liability

- ▶ 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.

General meeting

- ▶ the organization 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
- ▶ An SCE shall hold a general meeting at least once each calendar year, within six months of the end of its financial year
- ▶ General meetings may be convened at any time by the management organ or the administrative organ, the supervisory organ or any other organ or competent authority

General meeting

- ▶ The agenda for the general meeting held after the end of the financial year shall include at least the approval of the annual accounts and the allocation of profits
- ▶ **Meeting called by a minority of members**
 - ▶ who together number more than 5 000, or who have at least 10 % of the total number of the votes
 - ▶ Additions to the agenda
- ▶ MINUTES

VOTING RIGHT

- ▶ Every member shall be entitled to speak and vote at general meetings on the points that are included in the agenda
- ▶ A person entitled to vote shall be entitled to appoint a proxy to represent him/her at a general meeting
- ▶ **Each member of an SCE shall have one vote, regardless of the number of shares he holds**

RIGHT TO INFORMATION

- ▶ Every member who so requests at a general meeting shall be entitled to obtain information from the management or administrative organ on the affairs of the SCE arising from items on which the general meeting may take a decision
- ▶ REFUSABLE ONLY IF
 - ▶ it would be likely to be seriously prejudicial to the SCE
 - ▶ its disclosure would be incompatible with a legal obligation of confidentiality

Securities other than shares and debentures conferring special advantages

- ▶ An SCE's statutes may provide for the issue of securities other than shares, or debentures the holders of which are to have no voting rights. These may be subscribed for by members or by non-members. Their acquisition does not confer the status of member. The statutes shall also lay down the procedure for redemption. Holders of securities or debentures may be given special advantages in accordance with the statutes or the conditions laid down when they are issued

DIVIDEND/PROFITS

- ▶ The statutes may provide for the payment of a dividend to members in proportion to their business with the SCE, or the services they have performed for it.
- ▶ The balance of the surplus after deduction of the allocation to the legal reserve, of any sums paid out in dividends and of any losses carried over, with the addition of any surpluses carried over and of any sums drawn from the reserves, shall constitute the profits available for distribution

Acquisition/Loss of membership

- ▶ the acquisition of membership of an SCE shall be subject to the approval of the management or administrative organ
- ▶ LOSS
 - ▶ Membership shall be lost:
 - ▶ upon resignation,
 - ▶ upon expulsion, where the member commits a serious breach of his/her obligations or acts contrary to the interests of the SCE,
 - ▶ where authorised by the statutes, upon the transfer of all shares held to a member or a natural person or legal entity which has acquired membership,
 - ▶ upon winding-up in the case of a member that is not a natural person,
 - ▶ upon bankruptcy,
 - ▶ upon death,
 - ▶ in any other situation provided for in the statutes or in the legislation on cooperatives of the Member State in which the SCE has its registered office

European Cooperative Society (SCE)

- ▶ **COUNCIL DIRECTIVE 2003/72/EC of 22 July 2003 supplementing the Statute for a European Cooperative Society with regard to the involvement of employees**
- ▶ Where the management or administrative organs of participating legal entities draw up a plan for the establishment of an SCE, they shall as soon as possible take the necessary steps, including providing information on the identity of the participating legal entities and subsidiaries or establishments, as well as the number of their employees, to start negotiations with the representatives of the legal entities' employees on arrangements for the involvement of employees in the SCE
- ▶ special negotiating body