

THE EUROPEAN COOPERATIVE SOCIETY – JURIDICAL ADEQUATE INSTRUMENT IN THE DEVELOPMENT OF THE COOPERATIVES’ TRANSNATIONAL ACTIVITIES. POSSIBILITIES OF IMPLEMENTING THE CONCEPT WITHIN ROMANIA.

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Abstract:

The lack of public understanding regarding the role and impact of cooperatives upon welfare implies not recognizing cooperatives as a form of entrepreneurial activity. There is an obvious need to overcome the contradiction between reality and recognizing cooperatives. The European Community, wishing to guarantee equality of conditions in competition and to contribute to its economic development, should supply the cooperatives with adequate juridical instruments, capable to facilitate the development of their transnational activities. The current paper sets out to follow the implementation mode within the Romanian and European area of the regulation regarding the European cooperative society (SCE).

Keywords: *European cooperative society, the supervisory body, the general assembly, cooperative members, distribution of profit.*

JEL classification: P13, P19

Introduction

Through its activities, the European Union is concerned with and facilitates the development of the transnational activities of the cooperatives, at the same time taking into account their particularities and supplying them with adequate juridical instruments. In this sense, it is enabled the creation at an European scale of new cooperatives by natural or legal persons, since the European Union guarantees the rights to information, consultation and participation of the employees within a European cooperative society (SCE). The committee estimates that the potential of the cooperatives is not fully exploited and that their image must be improved. Through the social orientation of the cooperatives multiple local beneficial effects are generated, such as: a) through the participation of a plurality of interested parties – members, beneficiaries, workers – the cooperatives contribute to the consolidation of the social capital and to the trustworthy relations within the community; b) though protecting the incomes and occupying the workforce, the cooperatives help to resolve the problems that otherwise would remain the responsibility of the public politics – the cooperatives have proven the capacity to create and keep jobs in deteriorated market conditions better than the enterprises owned by the investor; c) besides creating hiring opportunities, the cooperatives favor those workers that are disadvantaged, excluded or prone to exclusion from the workforce. However, the social benefits generated by cooperatives are rarely taken into account by the impact analyses that compare the performance of different types of enterprises, because it also uses efficiency criteria that favor the firms owned by the investors and not their social objectives, the intrinsic results and the collective benefits generated by the enterprises.

1. Necessity, scope, the objectives of constituting an SCE

The regulation regarding the European cooperative society (SCE, after its name in Latin “Societas Cooperativa Europaea”) was adopted on July 22nd 2013 (JO from August 18th 2003), two years after adopting the European society statute (EC Regulation nr. 2157/2001 of the Council). The SCE regulation is completed by the 2003/72/CE Directive of the Council regarding involving the workers in SCE (the 2003/72/CE of the Council

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from July 22nd 2003). The deadline for adapting the national legislation to the Regulation and the Directive regarding SCE was established for August 18th 2006.

Because the transnational cooperation between cooperatives is nowadays confronted within the Community with juridical and administration difficulties, which should be eliminated in a market without frontiers, these difficulties can be constituted in sufficient elements of the *necessity of building SCEs* within the European area. Establishing a European juridical form for cooperatives, based upon some common principles, but which take into account the cooperatives' specific, should enable them to operate outside their national frontiers, on the entire territory of the Community or on one part of it.

Establishing a European cooperative society (SCE) aims to realize the internal market as well as to improve the economic and social situation within the entire European Community by removing the hindrances that stand in the way of commercial exchanges and adapting production structures at the community dimension of the market. The commercial border activities of the cooperatives are aggravated by the disparities between the laws regarding the cooperatives that are implemented in different countries. The SCE regulation aims to limit these problems by enabling the cooperatives to restructure themselves through the means of border fusions.

As a principal *objective of the statute* we note that of facilitating the border and transnational activities of the cooperatives. Like the SE Statute, the European cooperative society's statute (SCE) represents an optional juridical instrument. For their border operations/activities, the enterprises can opt for the juridical form of SCE or for that of a national cooperative.

2. An SCE's juridical statute – (CE) Regulation nr. 1435/2003 of the Council regarding the European cooperative society's statute

Cooperatives are, first and foremost, groups of natural or legal persons that respect special operation principles, different from those of other economic entities. Here we note, for example, the principles of structure and democratic control, the preeminence of the person as well as the equitable distribution of the net profit of the financial year. The preeminence of the person principle, for example, targets specific dispositions referring to the conditions of adhesion, withdrawal and exclusion of members; we are talking about the "one man, one vote" rule, the right to vote being connected to the person, which means that the members find themselves in the impossibility to exercise rights over the cooperative society's asset.

From a juridical point of view, a European cooperative society's (SCE) main objective should be satisfying the needs of its members and/or developing economic and/or social activities of these, by complying with the following principles (CE Regulation nr. 1435/2003): a) the cooperative society's activities mainly follow the mutual advantage of its members, in order for each of them to benefit according to their participation; b) the remuneration from the borrowed capital and from participations must be limited; c) the obtained profit must be distributed according to the completed activities, respectively used for satisfying the needs of the cooperative society's members; d) the cooperating members are involved, in a way or another, in the society's activities, since they can be customers, providers or workers; e) in exercising control, it must equally be shared between its members, however there still exists the chance to admit a pondered vote which would reflect each member's contribution to SCE; f) in the case of liquidation, the distribution of the net asset and of the reserves must comply with the principle of disinterested transmission to another cooperative entity with relatively similar scopes and objectives of general interest.

The community, wishing to guarantee the equality of the competition conditions and to contribute to its economic development should supply the cooperatives, entities normally recognized in all member states, with adequate juridical instruments, capable to

facilitate the development of their transnational activities. Establishing a European juridical form for cooperatives, based upon common principles, but at the same time taking into account the cooperatives' specific, must enable them to operate on the entire territory of the Community. This action is also supported by the United Nations Organization which encouraged all governments to ensure a friendly environment for the development of cooperatives in which they should be able to participate to the economic life (resolution adopted by the General Assembly in the 88th plenary session of the United Nations Organization from December 19th 2001 (A/RES/56/114)) on an equal footing with the other forms of enterprises. The General Assembly UNO, through its Resolution nr. 49/155 from February 4th 1995, referring to "The role of the cooperatives in the light of the new economic-social tendencies" encourages the governments to: a) completely take into account, on elaborating national strategies of development, the potential with which the cooperatives can contribute to solving the economic, social and environment problems; b) take into account that they must reconsider the juridical and administration limitations which slacken the cooperatives' activity regarding the elimination of the constraints that do not apply to the other enterprises and commercial activities.

2.1 Establishing and structuring a European cooperative society

SCE can be constituted as follows: a) from at least five natural and/or legal persons residing in at least two member states of the European Economic Space (EES), constituted according to the legislation of a EU member state and regulated by the legislation of at least two EU state members; b) through the merger of some cooperatives constituted in accordance with the legislation of a member state, which have their social headquarters and their central administration in the respective state, in the case in which at least two of them are governed by the legislation of different member states; c) through the transformation of a cooperative constituted in accordance with the legislation of a EU member state which has its social and central administration headquarters in the EES, in the case in which this cooperative has had for at least one or two years a unit or branch that is governed by the legislation of another EU member state.

In all these cases the existence of a transnational element is utterly necessary, since the founding members must come from at least two countries.

Establishment through merger can use the absorption procedure, respectively a new legal person can be established. The cooperatives that merge through the management or the administrative body, as applicable, draw up a merger project that contains a set of necessary documents/information (art. 22 of Regulation no. 1435/2003); the merger project will be approved by the General Assembly of each cooperative which merges. The control of the merger's legality, in what regards the procedure concerning performing the merger and establishing the SCE, will be exercised by the court of law, the notary or another authority of the member state on whose territory are the SCE headquarters. The merger will be effective from the date when the SCE is registered.

In what regards *establishment through transferring an existent cooperative*, the procedure does not attract the cooperative's dissolution or the creation of a new legal person. The administrative or management body of the respective cooperative elaborates a transformation project as well as a report that explains and justifies the juridical and economic aspects of the transformation as well as the effects on the workplaces; there will also be stated the consequences of adopting the SCE form for the members and workers. The transformation project and the SCE statute will be adopted by the General Assembly of the cooperative.

The SCE regulation requires as *organizational structure* of cooperatives the existence of two systems: a monistic and a dualist one. According to the monistic system, a SCE contains: a) general assembly; b) an administrative body; while for the dualist system a SCE requires: a) general assembly; b) a supervisory body and a management body.

According to the monistic system, the administrative body ensures the administration of SCE and represents it in the relations with third parties as well as in justice. Through statute it is established the number of members in the administrative body – no less than three, as well as its norms of determination. The members of the administrative body are appointed by the general assembly, with the exception of the members of the first administrative body, who can be appointed through statute.

The administrative body reunites at least once every three months (article 45 of CE Regulation no.1435/2003), with a periodicity established through statute, in order to deliberate in reference to the development of the SCE activities and their predictable evolution, taking in account, as applicable, the information regarding the enterprises controlled by SCE which can have a significant impact on the development of the latter's activities. The president of the administrative body is chosen by the general assembly and he can summon the administrative body within the conditions stated by the statute, by default or by the request of at least a third of its members.

In accordance with the *dualist system*, the management body is responsible for the administration SCE and it represents it in relation with the third parties and in justice. The number of members in the management body or the norms of determination are established in the SCE statute. The members of the management body can be appointed and dismissed by the supervisory body. However, a member state can provide through statute that the members of the management body can be appointed by the general assembly.

In accordance with the dispositions from the statute the management body chooses a president from its members. The president summons a reunion of the management body under the circumstances provisioned by the statute, by default or by request of a member. In the request one indicates the reasons of the summoning. The management body informs the supervisory body, at least once every three months with regard to the development of the SCE activities as well as with regard to its predictable evolution. Besides the periodic briefings, the management body must promptly inform the supervisory body about anything regarding the events that may have important repercussions over the SCE.

The supervisory body controls the administration ensured by the management body but it cannot exercise by itself the administration of the SCE. The supervisory body cannot represent SCE in front of the third parties, but only in front of the management organ, respectively in front of the members that constitute it, in the case of litigation or signing contracts. The members of the supervisory body are appointed and dismissed by the general assembly; the number of members as well as its norms of determination are established through statute.

Regarding the *general assembly* – the organization, its development as well as the voting procedures, are regulated by the legislation applicable to the cooperatives from the member state on whose territory the SCE headquarters are. Summoning the general assembly can be performed in any moment by the management body, the administrative body, the supervisory body or any other body or competent authority, in accordance with the legislation applicable to cooperatives. Likewise, summoning the general assembly and establishing the agenda for the day can also be done by the SCE members who together represent more than 5000 persons, or who have at least 10% of the total number of votes. Each SCE member has the right to one vote, regardless of the number of social parts he possesses. The decisions of the general assembly are taken with the majority of the valid votes expressed by the attendant members or representatives.

2.2 Cooperative members and distribution of profit

The quality of SCE member can be achieved by natural and legal persons with the approval of the management/administrative body and by fulfilling certain conditions such as: a) subscribing a minimum quantum capital; b) supplementary capital participation, if the statute requires it; c) other conditions connected to the objective of the SCE activity.

The operations whose effect is modifying the attribution and distribution of capital, its decrease or increase will be enlisted in the members' file – open alphabetically at the SCE headquarters, containing information like address, number and, accordingly, the category of social parts owned – in no more than a month from the registered modification.

Those members who lose the member quality by withdrawal or exclusion benefit from the right to be reimbursed their subscribed capital part proportionally reduced by any loss attributed to the social capital of the SCE. The sums will be repaid within no more than three years, but no sooner than six months from the date of the approval of the balance performed after losing the member quality.

Regarding the surplus of the financial year that will be allocated, the SCE statute differentiates the sums first and foremost towards forming a legal reserve; as long as the reserve does not outrun the capital, the retainer on the profit cannot be smaller than 15% from the surplus after deducting the reported losses. After allotting on legal reserves, the statute can require payment of dividends to the members proportional to the operations performed by them with SCE, respectively proportional with the activities performed in its favor. Likewise, the statute can exclude any distribution.

3. Reasons for the relative lack of success of the SCE Statute in the EU countries

The SCE Statute has registered a relative lack of success not only because it is complex but because the entities that opt to work like a cooperative tend to be well rooted in their local territory; the overwhelming majority of cooperatives are small enterprises that work inside the national frontiers and therefore the SCE statute has a limited action over them, not offering substantial advantages. This is why many people who establish cooperatives have the tendency to rely on their own national laws, which they know better. Likewise, the SCE regulation was implemented too late in many of the member states, even in countries like France, Italy and Spain where the cooperative movement is very strong. In a report of the European Committee from February 23rd 2012 – COM (2012) 72 final – to the European Parliament, Council, European Economic and Social Committee and the Committee of Regions regarding the implementation of the (CE) Regulation nr. 1435/2003 of the Council from July 22nd 2003, are noted both the advantages and the negative factors in the implementation of the SCE statute. If we were to analyze the advantages that the SCE Regulation proposes, at least the following elements can be outlined: a) the professional organizations claim that the most important advantage of establishing a SCE is the possibility offered by the regulation to have a European image; this way, the founders of a European cooperative can infiltrate on the markets where a European brand is easier to commercialize than a national one; b) by creating a SCE, the founders of a cooperative affiliate to the cooperative movement that enables them to establish branches in other states, respectively common border enterprises; c) the bigger cooperative financial units as well as the mutual insurance societies also benefit from the advantages of the supranational character of a SCE when one proceeds to the reorganization and simplification of their group structure.

Regarding the problems that arose in implementing the SCE Regulation, we can note the following: a) the most important problem when establishing an SCE is the lack of information regarding the SCE within the business community; the most important negative impulses are the ones represented by the establishment costs, the complex procedures that must be followed (as a consequence of the countless references to the national legislation) as well as the juridical uncertainty connected to the law that applies in each case; b) in accordance with the parties involved, the complexity of the regulation (with its multiple references to the national legislation) discourages not only the cooperatives, but also other types of entities that would be interested in organizing activities through a SCE; c) since it was implemented several years later than it should

have been, even in some states with a strong cooperative tradition like France, Italy and Spain, the SCE Regulation came across the relative lack of interest from the cooperative entities, especially since the overwhelming majority of the cooperatives are small enterprises that function within the national frontiers, well rooted in their local territory.

Coming back to the Report of the European Committee from February 23rd 2012 – COM (2012) 72 final – analyzing the distribution of SCEs at EU level, the following can be noted:

Chart nr. 1. Existent SCEs at 11.22.2011

Country	Number of SCEs
Austria	0
Belgium	2
Bulgaria	0
Cyprus	0
Czech Republic	0
Denmark	0
Estonia	0
Finland	0
France	1
Germany	2
Greece	0
Hungary	3
Iceland	0
Ireland	0
Italy	5
Latvia	0
Liechtenstein	1
Lithuania	0
Luxemburg	0
Malta	0
Netherlands	1
Norway	0
Poland	0
Portugal	0
Romania	0
Slovakia	7
Slovenia	0
Spain	1
Sweden	0
United Kingdom	0
Total number of SCEs	24

Source: Committee Report for the European Parliament, Council, European Economic and Social Committee and the Committee of Regions from February 23rd 2012 COM (2012) 72 final

In November 2011, in the 30 member states of EU/SEE there were registered 24 SCEs, as follows: five in Italy, seven in Slovakia, one in France, one in Liechtenstein, one in Netherlands, one in Spain, one in Sweden, three in Hungary, two in Germany and two in Belgium. The SCE Regulation was supposed to take effect in 2006. However, the great majority of the member states did not succeed in respecting this deadline. In December 2011, three member states had not yet taken the necessary measures in order to ensure the efficient implementation of the regulation.

4. Implementing the provisions of the measures of transposition of (CE)

Regulation nr. 1435/2003 of the Council in Romania

The overall visibility of the SCE in Romania is limited (CE Regulation 1435/2003 on the Statute for European Cooperative Society). A legal scholarship related to SCE does

almost not exist. The few mentions of the SCE in articles or chapters in books rather enunciate the provisions of Regulation 1435/2003, without including an analysis of the subject. Strategic meetings or contacts have been convened and conducted with the management representatives of the main national cooperative associations (meeting with Mr. Ioan Crisan, the President of the National Union of Consumer Cooperatives of Romania (CENTROCOOP) – open discussion and questionnaire based interview, Bucharest, January 2010) and with relevant cooperative members (telephonic questionnaire based interviews have been conducted with the following persons: Mr. Alexandru Puzderca, the President of the Prahova County Union of Handicraft Cooperatives, Romania, January 2010, and Mr. Gavril Florescu, Manager of the cooperative society —Supercoop, Târgu Neamț, Romania, January 2010) with the aim of gathering as much direct feedback and data as possible. Synthetic documents and information about the functioning and activity of national cooperative societies in Romania have been gathered as a result of contacts had with representatives of the Ministry of Economy, Trade and Business Environment (the main contact person has been Mr. Florin Rosu, Director responsible for the activity of cooperatives). No further specific measures have been taken by the relevant authorities in order to promote the SCE Regulation (publishing the SCE statute in Romania).

The legislation on SCEs has been collected mainly by consulting EU and Romanian websites, online libraries, online legislative data bases, online journals, bookshops and university libraries. In order to identify if there are any SCEs established in Romania, the National Trade Register has been consulted online and telephonically, which resulted in the negative (Trade Register Office of Romania). Overall, it can be said that the lack of dynamics as regards SCEs in Romania could be due to several factors: deficiencies regarding the visibility of the legal framework of SCEs within the cooperative sector, the civil society and the public sphere at large; although, a National Advisory Council of Cooperatives in Romania has been set up according to the provisions of Law 1/2005 on national cooperatives, the relationship between public bodies/administration and national cooperatives is remote and not targeted to the specificity of the national cooperatives' activity and needs/interests; the lack of specific measures/activities for the promotion of the SCEs; the specificity of the conditions for setting up SCEs (the minimum capital requirement which is high compared to the size of most of the cooperatives in Romania, difficulties in contacting and finding partners from other MSs in order to set up SCEs).

Conclusions and suggestions

In the European scenery, the cooperative societies could represent a binder in the direction of finalizing the internal EU market through minimizing the existent border obstacles and consolidating the EU competition. As a component of the social model, the cooperative entities deserve to benefit from a high level of recognition and support, like the constitutions of some of the member states and other different key documents of EU require. The (CE) Regulation nr. 1435/2003 of the Council from July 22nd 2003 regarding the statute of the European cooperative society (SCE) and the 2003/72/CE Directive of completion of the statute of the European cooperative society regarding the workers' participation are closely connected between them, so that the lack of attraction as well as their limited implementation within the European countries have led to countless reports regarding the identification of reasons and other obstacles encountered during the implementation. More than often the SCE takes the form of *a second degree* cooperative, exclusively formed of juridical persons and it is used by mutual societies that do not have a European stature, but wish to use a juridical statute associated with the social economy, respectively by the big enterprises. Moreover, the small cooperative societies which constitute the biggest part of the European cooperative movement continue to have difficulties in acceding to the SCE statute.

From the performed research, in 2011 only 24 SCEs were established, which confirms the failure to adapt of the statute to the specific character of the cooperative societies within Europe. The SCE Statute fulfills the necessities of the cooperatives only partially due to its complexity, this is why this instrument should be simplified and rendered comprehensible so that its accessibility degree for the users can grow, so that it can become easy to understand and applicable, guaranteeing the rights to information, consultation and participation for all the workers. On the other hand, increasing the European cooperative society's Statute's attractiveness must not be performed to the detriment of the standards; revising the Statute must allow a better recognition of this form of society in EU, the future initiatives and European measures connected to the SCE must focus on transparency, on the protection of the rights of the interested parties and on following the national habits and customs.

The SCE Regulation also contains countless references to the national legislation, either regarding the cooperatives, either regarding the equity stock companies. For example, an SCE must organize a general assembly of the shareholders at least once a year, with the exception of the case in which the national legislation regarding the national cooperatives requires a bigger frequency, or for the case in which a merger is performed in order to protect the creditors – this must be regulated by the national legislation regarding the mergers of equity stock companies.

Moreover, the SCE Regulation contains a series of options or references that allow the member states to impose on the SCE a certain behavior. In order to simplify the regulation, one must delimit more than 30 articles that contain such options and references in three principal categories as follows: a) articles that regulate common aspects of the SCE and SE Regulations; b) articles that directly refer to the legislation regarding stock companies; c) articles that contain references and options that regulate the activities and aspects specific to the cooperatives.

In a more general context, the problem of the European juridical forms, in our case the SCEs, and of the necessity to revise these, is placed within the framework of the current reflection about the future of the European right of the commercial societies. The results of this reflective process will contribute to the Committee's assessment regarding the necessity and, if it is the case, regarding the instruments that will be employed to satisfy the requirement of the business environment within Europe for a more equitable environment, a better regulation and simplification.

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