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**COMMUNICATION FROM THE COMMISSION TO THE COUNCIL AND THE
EUROPEAN PARLIAMENT, THE EUROPEAN ECONOMIC AND SOCIAL
COMMITTEE AND THE COMMITTEE OF REGIONS**

On the promotion of co-operative societies in Europe

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1. INTRODUCTION

1.1. Background

In the European Union (EU) there are at least 300,000 co-operatives, providing 2.3 million jobs. They exist in all Member States and accession or candidate countries. At the same time they influence the every day life of more than 140 millions of citizens who are members in co-operatives¹.

Co-operatives today thrive in competitive markets and although they do not seek to maximize profits on capital they have achieved significant market shares in areas where capitalised companies are very strong such as banking, insurance, food retail, pharmacy and agriculture. They are growing fast in the sectors of health care, services to business, education and housing.

Co-operatives operate in the interests of their members, who are at the same time users, and they are not managed in the interests of outside investors. Profits are received by members in proportion to their businesses with the co-operative, and reserves and assets are commonly held, non-distributable and dedicated to the common interests of members. Because personal links among members are in principle strong and important, new membership is subject to approval while voting rights are not necessarily proportional to shareholdings (one man one vote). Resignation entitles the member to repayment of his part and implies reduction of the capital.

All co-operatives act in the economic interests of their members, while some of them in addition devote activities to achieving social, or environmental objectives in their members' and in a wider community interest.

1.2. Objectives of the Communication

The debate about the role of cooperatives has gained a renewed interest after the adoption by the Council in July 2003 of the Regulation for a Statute for a European Co-operative Society², hereinafter SCE and the Directive on workers involvement in the decision making process of the SCE.

The Commission believes that the potential of cooperatives has not been fully utilized and that their image should be improved at national and European levels. Particular attention should also be paid to the new Member States and candidate countries, where despite extensive reforms the instrument of co-operatives is not fully exploited.

The adoption of the SCE Statute implies that Member States will be obliged to adopt measures in order to implement the Regulation and the Directive. The Commission believes that this is a good opportunity for national authorities and stakeholders to

¹ "Statistics and information on European co-operatives", by International Co-operative Alliance, Geneva 1998, published with the assistance of the Commission of EU; <http://www.ica.coop/europe>

² Council Regulation (EC) N° 1435/2003 of 22nd July 2003 on the Statute for a European Co-operative Society, and Council Directive 2003/72/EC of 22nd July 2003 supplementing the Statute with regard to the involvement of employees; O.J. N° L207 of 18/8/03.

embark on initiatives which aim at improving cooperatives' legislation and at creating a more favourable environment for their establishment.

Another issue which has drawn the Commission's attention is the increasingly important and positive role of cooperatives as vehicles for the implementation of many Community objectives in fields like employment policy, social integration, regional and rural development, agriculture, etc. The Commission believes that this trend should be maintained and that the presence of co-operatives in various Community programmes and policies should be further exploited and promoted.

A renewed interest in the issue of cooperatives can be observed also at the international level. The main important development in this respect is the adoption of Recommendation on the Promotion of Cooperatives by the International Labour Office, in 2002 (see infra footnote 19), which was officially approved by that time the Governments of all Member States of the EU as well as by the Governments of all accession and candidate countries.

Because of this renewed interest in the issue of cooperatives, in 2002 the Commission undertook a wide public consultation of co-operative businesses in Europe³. The responses represented the views of virtually all sectors of co-operative activity, with a particularly strong response from accession and candidate countries⁴. Whilst the analysis and conclusions of the consultation document received wide support, many constructive comments and suggestions were made.

The present Communication reflects the outcome of this extensive consultation process. It tries to concentrate to three main issues which have been pointed out in the responses and establishes what Member States, and co-operatives themselves can do to exploit that cooperatives' business potential. For the same three issues the Communication enumerates a series of concrete actions to be undertaken by the Commission in order to attain the objectives.

The main issues of the Communication are

- The promotion of the greater use of cooperatives across Europe by improving the visibility, characteristics and understanding of the sector
- The further improvement of the cooperative legislation in Europe
- The maintenance and improvement of cooperatives' place and contribution to community objectives.

³ The consultation document "Co-operatives in Enterprise Europe" can be found at: <http://europa.eu.int/comm/enterprise/entrepreneurship/coop/consultation/index.htm>.

⁴ 46 responses were received: 7 from European Associations, 17 from representative organisations in Member States, and 5 from co-operative enterprises, which altogether cover the majority of the sector in Europe. In addition 4 from public authorities, 9 from Candidate Countries (including a joint opinion of 48 organisations in 10 countries), 2 from international (global) organisations and 2 from experts. The original submissions and summaries (in English and French) can be found on the above-mentioned web-site.

2. PROMOTING THE ENTREPRISE TYPE OF COOPERATIVES AND ENSURING AN ACCURATE UNDERSTANDING OF THE SECTOR

2.1. Highlighting the importance of the Cooperative Entrepreneurship

2.1.1. Actions ensuring the understanding of cooperatives importance in economy

Promoting a wider dissemination of the importance of cooperatives as enterprises reveals the need to explain the areas in which they have a strong role to play.

- The cooperatives may be a means for building or increasing economic power of Small and Medium-sized Enterprises (SMEs) in the market. The Cooperative is a form of company which allows SMEs to acquire some advantages of size, such as scale economies, access to markets (including participation in larger public tenders), purchasing power, marketing power, management-development, training and research capacity. Co-operatives offer an appropriate vehicle for enterprises to undertake joint activities and share risks, whilst retaining their independence. Co-operatives also enable vertical integration of product chains. This can be beneficial for small enterprises that are in a weak position in the supply chain and wish to gain for themselves the revenue from added value of their products or services. However most non-co-operative enterprises remain unaware that the co-operative form might be an appropriate vehicle for such common activities.
- The cooperative is a means for providing high quality services. Services represent 70 % of output and 69 % of jobs in the EU. More than 75% of all new businesses created in Europe are in the services sectors. Service enterprises must provide increasingly high quality and tailored services to their users. A co-operative structure can allow to the users of its services, since they are at the same time its members, the power to influence the business that serves them, ensuring that it responds directly to their needs. Co-operatives are often able to provide services to groups that would otherwise not be able to access them because their supply is not attractive to profit driven companies. This is the case of the “proximity services” such as health and welfare, sectors where co-operatives are growing most rapidly⁵.
- The cooperatives help to the building a knowledge-based society. A lot of cooperatives (e.g. workers’ cooperatives), are enterprises where members as users have a real influence over management decisions. The participatory management structure of co-operative enterprises generates the intangible assets of knowledge and skills. In this sense co-operatives act as schools of entrepreneurship and management for those who might not otherwise have access to positions of responsibility.

In order to ensure that co-operatives continue to make an important contribution to economic dynamism and growth in the ways suggested above it will be important that Member States’ authorities, as well as national, regional or local level

⁵ A 2002 EUROSTAT study of co-operatives in 7 Member States from 1995-8 demonstrates that they are growing particularly rapidly in education, health and social work and other community, social and personal service activities (NACE Sections M, N & O).

organisations develop or intensify their efforts in ensuring a better understanding of the sector.

Action 1. The Commission will examine, according to the procedure based on the Multi-annual Programme for Enterprise and Entrepreneurship⁶ and other Community programmes, possibilities to support initiatives from stakeholders' organisations and Member States. These actions should aim at raising awareness, amongst public authorities and private economic operators, for the potential of the cooperative form as a means of establishing a business or a grouping of small enterprises. These initiatives may comprise organisation of conferences, drafting of explanatory booklets, thematic research studies, creating day events, developing networks etc.

Given the different state of development of the cooperative businesses in different countries (see point 3.2.1. infra) there is a potential for an intensified exchange of information and experiences.

Action 2. The Commission will examine the possibility of organising a structured exchange of information and experiences as well as the identification of good practices in the area of doing business through cooperatives. It will also examine with Member States and stakeholders the feasibility of preparing a benchmarking exercise of national policies and practices in the area.

2.1.2. New Member States and awareness of the role of cooperatives

So far there have been only little initiatives in this regard and there is a widespread lack of information on the potential and possibilities of cooperatives. The message should therefore be passed in the acceding countries to individuals and small entrepreneurs that establishing a co-operative can be an attractive option to start-up, for people whose capital, experience or confidence is limited. By pooling their resources and experience they can share the responsibilities and risks that might make working on a self-employed basis unviable.

Co-operatives have faced particular problems in the former planned economies of central Europe. Although they were often the most free form of enterprise permitted under central planning, they have since suffered from their identification with the old system. In this respect the potential of new co-operative initiatives to assist the balanced development of the economies and societies of the new Member States and candidate countries must also be emphasised. The Commission in the context of Action 1 and Action 2 will examine how to best promote initiatives in new Member States aiming at awareness raising and transfer of information and experience across Europe.

2.1.3. Improving statistical data

Another problem which contributes to the incomplete understanding of the potential of the co-operative enterprise is the poor data concerning its quantitative importance and trends in its development.

⁶ Council Decision (2000/819/EC) of 20 December 2000 on a multiannual programme for enterprise and entrepreneurship, and in particular for small and medium-sized enterprises (SMEs) (2001-2005) OJ L 333/84, 29.12.2000

Action 3. The Commission will examine the possibilities of developing the use of “satellite accounting techniques” for the collection and analysis of statistical data on cooperatives and having them applied by national statistical institutes.

2.2. Actions for the promotion of cooperatives.

2.2.1. Education and Training

Curricula for management training tend to be based on the predominant business model i.e. the companies limited by shares. It is therefore hardly surprising that young entrepreneurs rarely consider the “co-operative option”, even when it might be the most appropriate for their activities.

Several examples exist however of specific modules for co-operative management training⁷ (including distance learning) and even of dedicated university courses for co-operative entrepreneurs. Unfortunately, most such initiatives remain isolated and these could be usefully networked across Europe.

The Community education, training, e-learning and lifelong learning programmes have particular potential to assist co-operatives, as has been shown by their valuable participation in such programmes as Erasmus/Socrates, Leonardo da Vinci I & II, and their predecessor programmes since the mid 1980s. The Commission invites Member States and national educational institutes and stakeholders organisations to develop awareness of the co-operative form via the curricula of business studies courses at secondary and university levels and promote the development of relevant management skills.

Action 4. The Commission will take the necessary steps to ensure that programmes for education, training, lifelong learning and e-learning should facilitate the participation of co-operatives, particularly those programmes that encourage trans-national projects and trans-national specialist networks, and that lead to the development of best practice in innovative areas.

2.2.2. Business Support Services

The particular nature of co-operative business also calls for tailored business support services. Such counselling can be an invaluable accompaniment to, and condition of, loan financing. The networking at European level of agencies offering specialised advice to cooperatives would enable beneficial exchanges of experience. However, where demand for these services is not sufficient to justify specialised agencies, a referral system may be more appropriate. Chambers of commerce and employers’ federations should also be aware of the needs of co-operative businesses in order for them to provide relevant services. The Commission invites Member States and stakeholders’ organisations to examine and ensure the provision of support and advisory services to co-operative enterprises

⁷ See International Labour Office «Training Methodology for Co-operative Management» in <http://www.ilo.org/coop>.

Action 5. The Commission will examine the possibility of identifying and disseminating good practices in the area of business support services for co-operatives, following previous work on SMEs and very small enterprises⁸.

2.2.3. *Access to Finance*

Co-operatives have no, or limited access to equity markets and are therefore dependent on their own capital, or credit financing⁹. This is mainly due to the general lack of knowledge of the characteristics of the cooperative form of enterprise by both the credit institutions and the regulatory authorities. In this context and in the framework of Action 1 and Action 2 the Commission wishes to play an important role in facilitating exchanges of experience amongst both co-operative organisations and national administrations on good and innovative practices in financing co-operatives. In addition, in the context of Action 9 and Action 10 it is also important to examine how best the accounting standards and other relevant rules may take into consideration the cooperative specificities related to the structure of capital and evaluation of assets.

However, as far as the public financing is concerned, the Commission invites Member States to ensure that enterprise-financing initiatives are also accessible and appropriate for co-operatives. Similarly, in view of the specific needs of co-operatives the Commission on its turn will examine if it is pertinent to include a specific reference in the European Investment Fund¹⁰.

As their “sisters” in EU many co-operatives in acceding countries suffer from particular difficulties in raising credit or equity capital. Several co-operative organisations have called for a specific pre-accession programme for co-operative enterprises; however the Commission considers that the most effective means of providing support is through existing instruments.

Action 6. The Commission will assess the possibility of including a specific reference to co-operative enterprises in the financial instruments managed by the European Investment Fund which currently form part of the “Multi-Annual Programme for Enterprise and Entrepreneurship and in particular for small and medium-sized enterprises”. Care will also be taken to ensure that co-operatives continue to be eligible in other Community programmes and that they have full access to information about these programmes.

2.2.4. *Working with Co-operatives’ Representative Organisations*

Co-operatives are well represented at European level through their national or sectoral federations and their co-ordinating bodies. The Commission will continue to

⁸ See http://europa.eu.int/comm/enterprise/entrepreneurship/support_measures/reports_studies.htm and <http://europa.eu.int/comm/enterprise/entrepreneurship/craft/craft-studies/craft-supportserv.htm#support-services-reports>

⁹ Several co-operative movements have sought to support growing co-operatives by establishing investment funds (for example ESFIN/IDES in France <http://www.esfin-ides.com/pages/Contact/ContactRubrique.htm> and Coop Action in the UK <http://www.co-operativeaction.coop/>: In Italy this process has been facilitated by Law N° 59 of 31/1/92 which enables co-operatives to commit 3% of their taxable annual profits (supplemented by the assets of liquidated co-operatives) to mutual benefit funds for the promotion of co-operatives, see Coop Action:

¹⁰ <http://www.europa/comm/enterprise/entrepreneurship/financing/index.htm>

maintain frequent contacts with representative organisations of co-operatives¹¹ concerning all policies and issues of relevance (see also action Action9).

2.3. Specific areas of enterprise policy where cooperatives play an important role

2.3.1. *The role of Workers' Cooperatives in Enterprise Transfers*

Approximately one-third of enterprises in Europe will transfer ownership in the next 10 years and increasingly such transfers are taking place outside the family of the current owner. Employees have a particular interest in the sustainability of their enterprises and often have a good understanding of the business in which they work. However they often lack the appropriate financial means and support to take over and manage an enterprise. Careful and gradual preparation of transfers to employees organised in the form of a workers' co-operatives, can improve survival rates¹².

In this context it is worthwhile to note the recent Commission's Communication of July 2002 on a "Framework for the promotion of financial participation of employees in the capital or profits of their company"¹³. One form of such schemes is to associate employees in enterprise results, on a collective basis, and to accumulate assets into workers' co-operative, which will serve as a possible source of financing an employee buy-out. The Commission invites Member States to consider incentives to encourage such schemes enabling employee buy-out.

2.3.2. *Social Enterprises and New Co-operative Legal Forms*

The effectiveness of co-operative forms in integrating social objectives has led certain Member States to adopt specific legal forms to facilitate such activities. These have experienced considerable success and generated interest in other Member States facing similar problems¹⁴. These forms of cooperatives face particular problems as to the financing of their activities.

Action 7. The Commission will study policies, good practices and regulations concerning social cooperative enterprises in Europe and will report to the Community Institutions.

¹¹ The most important are the ICA Europe -International Cooperative Alliance and the CCACE Co-ordinating Committee of European Co-operative Associations.

¹² A Commission Recommendation of 1994 (N° 94/1060/EC of 7-12-1994 OJ L 385 of 31-12-1994 p.14) called on Member States to promote the transfer of enterprises to their employees by reducing taxation on capital gains realised on the transfer of shares to employees, by waiving registration fees, or through tax advantages or deferral. Follow-ups to this Recommendation in 1998 and 2002 noted the lack of progress by Member States in this area.

¹³ COM(2002) 364 final of 05.07.2002 see in http://europa.eu.int/comm/employment_social/soc-dial/labour/index_en.htm

¹⁴ 7,700 social co-operatives were established in Italy within 10 years of Law 381 of 1991, employing 210,000 of which 22,600 were disadvantaged. These mix voluntary and paid work, and integrate excluded groups into the economy. In 2001 the French government introduced the new legal form of a Société Coopérative d'Intérêt Collectif (SCIC) and in the UK a proposal was recently made for a Community Interest Company (<http://www.dti.gov.uk/cics/>). In several accession and candidate countries co-operatives of the disabled (which resemble integration coops in Italy) have provided quality jobs and medical support for the disabled since the early 20th Century.

3. PROVIDING A SUITABLE REGULATORY ENVIRONMENT

3.1. Implementation of the European Co-operative Statute

The adoption of the Statute for a European Co-operative Society, or “SCE”, will allow co-operatives to operate throughout the EU with a single legal personality and set of rules, in the same way as the Statute for a European Company (SE) will do for public companies limited by shares.

The Regulation provides that Member states have 3 years in which to implement and transpose the Statute into national laws, i.e. until the 18 August 2006.

In the course of the consultation process it has been said that the SCE is a necessary instrument for co-operatives to freely operate across Europe. It should therefore be implemented as soon as the date foreseen above. To this end the Commission will examine in the context of Action 1 how best to co-ordinate an information campaign to make potential users aware of the SCE instrument. The main targets will be business advisors and support services, accountants, and chambers of commerce. Publications will be distributed via EuroInfo Centres in Member States. In addition the Commission will take the necessary steps for the prompt implementation of the Regulation in order also to diminish eventual infringement procedures against Member states. In this context:

Action 8 The Commission intends to convene a series of meetings with Member States’ officials responsible for implementation of the Regulation and Directive on the SCE in order to discuss all matters for which national action is necessary or for which national law applies.

3.2. Coherence between national laws

3.2.1. *National rules governing SCE*

All Member States permit the creation and operation of co-operatives. However, in certain Member States it is not possible for co-operatives to operate in certain sectors. In addition, the legal forms and traditions of co-operatives in Member States are highly varied. The different approaches to legislation governing co-operatives can be categorised into three types: (1) countries where there is one general co-operative law, (2) countries where co-operative legislation is divided according to the sector and social purpose of the co-operative, and (3) countries where there is no co-operative law and where the co-operative nature of a company is solely derived from its internal statutes or rules. This heterogeneity may result in obstacles to efficient operation of co-operatives on a cross-border or European level as the rights and obligations of members, directors and third parties become unclear. This problem will become more apparent when certain provisions of national laws are applied to European Co-operative Societies according to their Member State of registration. Therefore, in the context of Action 8, the Commission will also seek to see with co-operative organisations and national authorities cases where the differences in national laws can create problems to the effective application of the ECS Statute and propose commonly accepted solutions. Such an exercise is able to lead to an indirect approximation of national laws.

3.2.2. *Cooperation between national authorities and Commission services*

Improvements in co-operative legislation can be also achieved by facilitating contacts between the national regulators and providing opportunities for common analysis of good or innovative practice¹⁵. This process should include candidate states, some of which have already requested assistance in reforming their co-operative laws, and in which co-operatives are subject to even greater levels of misunderstanding by regulators.

Action 9. The Commission will work actively with public authorities and co-operative organisations, especially in the new Member States, to ensure improvements of co-operative legislation; to that end the Commission also insists on all Member States' duty to inform each other and the Commission when drafting and before adopting new legislation in the area.

3.2.3. *Drafting model laws*

Notwithstanding the differences in laws, as mentioned above, the Commission does not intend to make proposals for the harmonisation of national co-operative legislation¹⁶. Several co-operative organisations mainly established in the EU have stated that national legislation does not constitute a significant constraint on their activities within their own countries. The High Level Group of European Company Law Experts¹⁷ mandated by the Commission has argued that co-operative organisations should take the initiative to develop model co-operative laws as a means of encouraging gradual approximation of national laws governing co-operatives.

Action 10. The Commission welcomes initiatives from national and European organisations to draft "model" laws, and is willing to assist in the drafting.

3.2.4. *The use of the ICA cooperative principles*

Although laws governing cooperatives are diverse in approach and based on different traditions, they generally respect the co-operative definition, values and principles set out in the "Statement on the Co-operative Identity" adopted by the International Co-operative Alliance (ICA) in 1995 and recently endorsed by a resolution of the U.N.¹⁸ and fully incorporated into a Recommendation of the I.L.O.¹⁹. Consequently national

¹⁵ The comparative table of Member States' and candidate countries' co-operative legislation is available on the following website:http://www.europa/comm/enterprise/entrepreneurship/coop/social-cmaf_agenda/social-cmaf-cooperatives.htm

¹⁶ Commission Communication of 21/5/2003: "Modernising Company Law and Enhancing Corporate Governance in the European Union – A Plan to Move Ahead" - Chapter 3.7" Enhancing the transparency of national legal forms of enterprise" see next footnote for reference.

¹⁷ Final Report of the High Level Group of Company Law Experts on a Modern Regulatory Framework for Company Law in Europe (4/11/ 2002); see in http://europa.eu.int/comm/internal_market/en/company/company/modern/index.htm

¹⁸ See U.N. resolution 56/114 adopted at the 88th Plenary meeting of the U.N. General Assembly on 19th December 2001 and the Report of the Secretary General 2001/68 dated 14th May 2001.

¹⁹ Recommendation 193 on the promotion of Cooperatives adopted at the 90th Session of the International Labour Conference on 20th June 2002. Apart from the definition and values the Recommendation contains the following principles: the voluntary and open membership, the democratic member control, the member economic participation, the autonomy and independence of the cooperative, the education,

legislators should be based on the co-operative definition, values and principles when drafting new laws governing co-operatives. In this context however Member States are required also to be sufficiently flexible in order to enable co-operatives to compete effectively in their markets and on equal terms with other forms of enterprise. Co-operatives do not need preferential treatment, but a legislation creating a more level playing field, in the sense that they are allowed to act free from restrictions and obligations, which are based on various national policy objectives, and to which are not however subject the other forms of companies with which they compete in a modern market economy. Well-drafted legislation can also help to overcome some of the restrictions inherent in the co-operative form, such as lack of access to investment capital. For example co-operatives might be permitted to issue non-user investor shares which are tradable and interest bearing, on the condition that the participation of such non-user shareholders be limited to ensure that the co-operative nature of the companies is not jeopardised. The Commission invites Member States to be guided, when drafting national regulations governing co-operatives, by the “definition, values and co-operative principles” of the above mentioned Recommendation but also to be sufficiently flexible in order to meet the modern needs of cooperatives (see also Action 9 and Action 10).

3.2.5. *Avoiding “premature” dissolutions of successful cooperatives; discouraging predatory asset stripping or “de-mutualisations”*

The Commission encourages Member States to ensure that the assets of co-operatives upon dissolution or conversion should be distributed according to the co-operative principle of “disinterested distribution”; that is to say either to other co-operatives, where members can participate, or to co-operative organisations pursuing similar or general interest objectives. Such assets are often built up over generations, and remain collectively owned and are “locked-in” to the objectives of those co-operatives. However, it should be possible to provide for the assets of a co-operative to be distributed to its members upon dissolution, in well examined cases. Member States are encouraged to provide sufficient protection to co-operative assets by ensuring that in case of take-over bids and of the consequent conversion of a cooperative to the form of a public company limited by shares the wishes of members and the objectives of the co-operative are respected (see Action 9 and Action 10).

3.2.6. *Appropriate tax treatment and other “benefits”*

Some Member States (such as Belgium, Italy and Portugal) consider that the restrictions inherent in the specific nature of co-operative capital merit specific tax treatment: for example, the fact that co-operatives’ shares are not listed, and therefore not widely available for purchase, results almost in the impossibility to realise a capital gain; the fact that shares are repaid at their par value (they have no speculative value) and any yield (dividend) is normally limited may dissuade new memberships. In addition it is to be mentioned that co-operatives are often subject to strict requirements in respect of allocations to reserves. Specific tax treatment may be welcomed, but in all aspects of the regulation of co-operatives, the principle should be observed that any protection or benefits afforded to a particular type of entity should be proportionate to any legal constraints, social added value or limitations

training and information rights of members, the duty of co-operation among co-operatives, and concern for the community (for e-address see footnote 7)

inherent in that form and should not lead to unfair competition. In addition any other granted “advantages” should not permit the undesirable use of the co-operative form by non *bona fide* co-operatives as a means of escaping appropriate disclosure and corporate governance requirements. The Commission invites Member States when considering appropriate and proportionate tax treatment for equity capital and reserves of co-operatives, to take good care that such provisions do not create anticompetitive situations (see also Action 9 and Action 10.)

3.2.7. *Competition rules applying to cooperatives.*

The consultation process on co-operatives revealed some confusion and concern regarding the application of competition rules to co-operatives.

Co-operatives that carry out economic activities are considered as “undertakings” in the sense of Articles 81, 82 and 86 to 88 of the European Community Treaty (EC). They are therefore subject in full to European competition and state aid rules, and also to the various exemptions, thresholds and *de minimis* rules. There are no grounds for special treatment of co-operatives in the general competition rules; however certain aspects of their legal form and structure should be taken into account on a case-by-case basis, as previous decisions and rulings have demonstrated.

Most cases have involved co-operatives of legal entities (rather than those of physical persons). Such a co-operative is both an association of undertakings, and (where it has an economic activity) an undertaking in its own right. Both the co-operative and its members are therefore subject to competition rules. Furthermore, competition rules apply not only to the agreements between undertakings (e.g.: the creation of a co-operative and its founding statutes), but also to the decisions made by the co-operative’s internal bodies. Therefore, whereas organisation as a co-operative may not necessarily conflict with Article 81 EC, its subsequent behaviour or rules might be considered restrictive of competition. The Commission invites stakeholders’ organisations and business support services to ensure a wide dissemination of the competition rules which may be of relevance to the cooperatives in Europe.

3.3. **Review of the Regulation**

Article 79 of the SCE Regulation provides that: “*Five years at the latest after the entry into force of this Regulation, 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.*” This article defines some of the issues that the report should address (location of head office and registered office, de-merger of an SCE, legal remedies in case of fraud) etc.

In addition to that, the High Level Group of European Company Law Experts²⁰ stated that “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”.

²⁰ Report of the High Level Group op.citChapter VIII “Co-operatives and Other Forms of Enterprise”, p.121.

In an effort to synthesize the above recommendations one could say that the most important element to be evaluated is the freedom given to Member States' to regulate a series of questions according to the national traditions. Because it is expected that the Regulation has an indirect and gradual harmonising effect, as it becomes a reference for future legislation, particularly in the new and candidate countries, (see also point 3.2.1. of the Communication) the Commission believes that it is even more important that the regulation in the future provides simpler and stronger rules, and that references back to national laws are minimised.

Action 11. In the context of the review work the Commission will pay particular attention to potential simplification of the regulation by suggesting the adoption of common Europe-wide rules where possible.

4. THE CONTRIBUTION OF CO-OPERATIVES TO COMMUNITY OBJECTIVES

The multiple benefits of co-operatives to Europe's economy make them an integral element in achieving the Lisbon objectives; in fact co-operatives are an excellent example of company type which can simultaneously address entrepreneurial and social objectives in a mutually reinforcing way. In addition to the entrepreneurship policy, co-operatives play an important role in the agricultural economy, for the development of regions with economic difficulties, while their structure is ideal to enhance employment and social cohesion. Promoting a wider dissemination of the role and potential of co-operatives is therefore not only important in respect to the immediate benefits for co-operatives themselves but also because of its links with important policy and objectives as explained in the next paragraphs. There is therefore a clear need for efforts at Community level to make sure that the role of cooperatives is fully taken into account through relevant Community programmes.

4.1. Agriculture policy and enlargement

Cooperatives have played and continue to play a very important role in the agriculture sector in the whole Europe. Support has already been provided through rural development measures financed by the EAGGF for establishing organisations to provide various services to farmers on a collective basis (e.g.: machinery rings, farm relief and management services). Co-operatives are a highly appropriate vehicle for such services and are eligible for these measures.

In the new Member States, the negative connotation of the term cooperative is a problem for modern cooperative development. In the collective imagery, it is still mainly associated with the lack of freedom of farming due to central regulations. In all the acceding countries, land had been privatised marking the creation of thousands of small and medium farms and processing enterprises. This fragmented structure does not allow firms to reap benefits from economies of scale, while small businesses have no the necessary capital to invest in the new technology necessary to fulfil the newly introduced stricter sanitary and phytosanitary rules. Lack of capital and inappropriate or conflicting legislation are still problems for many farm and food enterprises. The establishment of co-operatives by small farms working in the same or related sectors can enable them to achieve the critical mass required for larger investment projects, whilst providing banks and investors with suitable guarantees. The European Unions' programmes, PHARE, ISPA eased, to certain extent, the access to capital, while in recognition of the importance of collective approaches, both the pre-accession instrument SAPARD, and the Accession Treaty provide

specific aids for agricultural producer groups, which may again take the form of co-operatives.

The Commission believes that the form of agricultural cooperatives may be an important vehicle towards further development of the agricultural sector in the new countries. Apart from the adoption of supportive legislation, the Commission may examine with the new Member States other factors for success like: solid cooperative business activities, good management, cooperation between cooperatives and, above all, involving young people in the development and management of cooperatives. In addition, a link between income support policies and training and capacity-building might be pursued. A high skilled and young generation of farmers would mean a major willingness to innovate or take risks either on the agricultural cooperative business or through farm diversification.

A final consideration concerns the fact that service providers are often absent in rural areas in the new Member States. The promotion of marketing and purchasing cooperatives may tackle this lacuna, while new opportunities are offered to cooperatives in the area of provision of non-agricultural services, previously provided by government, like health care, child and elderly care, and “social cooperatives” with various community interest objectives.

A.12. The Commission in addition to actions Action 1 and Action 2 will seek to ensure that the particular contribution of co-operatives to agricultural development in the new Member States is further exploited through relevant Community programmes.

4.2. Rural and regional development

As member-based organisations co-operatives are rooted in local communities; they contribute to maintaining local jobs and providing local services in a context of economic globalisation. The users of a co-operatives' services, be they producers, consumers or workers, tend to be geographically stable. Such strong local roots can be an effective counter to the desertification of rural areas and assist the development of poorer regions and localities. Member States are invited to take seriously into consideration the beneficial role of local cooperatives in regions, remote areas and poor urban places, when they design a supportive policy for areas which are lagging behind economically.

4.3. Job creation by cooperatives of the “Social Economy” sector

The performance of a co-operative is not predominantly measured by the level of return on capital invested, but on the service it provides to its members. The ability of co-operatives to operate on a break-even or cost-plus basis allows many of them to be created and run by persons who would not otherwise have access to the labour market. They can therefore effectively integrate excluded groups into work and society, giving them also entrepreneurial experience and management responsibility. By providing entrepreneurial solutions to meeting unsatisfied economic and social needs, particularly where public or private initiative is lacking, co-operatives can create jobs and encourage sustainable and solidarity-based growth without seeking for net profit to be distributed to the members (social economy); in this way they add to the flexibility of labour markets. Cooperatives are therefore often considered as part of the “social economy” along with other forms of people-based enterprises such as mutual societies, associations and foundations. Many public authorities have

identified the “social economy” co-operative form as an effective way of promoting balanced and solidarity-based growth²¹. The Commission will seek in the context of Action 7 to ensure that the particular contribution of cooperatives to create jobs continues to be recognised and is further exploited through relevant Community policies and programmes, like the EQUAL Programme, which is supporting a variety of “social economy” co-operative projects under its entrepreneurship pillar.

5. CONCLUSION

Cooperatives have a strong tradition dating back to the industrial revolution; however, they should not be seen as a relic of the 19th Century. Today the Commission recognises the rich variety of enterprise forms in the EU is an important element for the EU economy. They are modern and dynamic enterprises with high potential. Cooperatives account for 83% of Dutch agricultural production, 50% of the French and 37% of the Cyprus banking services, 35% of the Finnish food retail, 21% of Spanish health care and 60% of Swedish forestry. The Commission will therefore support the effective promotion and development of co-operative enterprise in the European Union and candidate countries. Nevertheless, development of co-operative enterprise remains predominantly in the realm of competence of the Member States. Achieving the goals set out in this document will therefore require also the active involvement of Member States and candidate countries.

The actions outlined in this Communication cover the period 2004-2008. At the end of this period, the progress made in relation to the objectives set out in this Communication will be assessed, closely associating all the stakeholders in this issue. On the basis of this evaluation a decision on appropriate future initiatives will be taken.

²¹ Council Decision n° 2002/177/EC of 18 February 2002 on guidelines for Member States' employment policies for the year 2002. OJL 60, of 1-3-2002, p 60. Guideline 11 of the European Employment Strategy (2002) states that “Member States will promote measures to enhance the competitive development and the capacity of the social economy to create more jobs and to enhance their quality, especially the provision of goods and services linked to needs not yet satisfied by the market, and examine, with the aim of reducing, any obstacles to such measures