

## I

(Acts whose publication is obligatory)

**COUNCIL REGULATION (EC) No 1435/2003**

**of 22 July 2003**

**on the Statute for a European Cooperative Society (SCE)**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 308 thereof,

Having regard to the proposal from the Commission <sup>(1)</sup>,

Having regard to the opinion of the European Parliament <sup>(2)</sup>,

Having regard to the opinion of the European Economic and Social Committee <sup>(3)</sup>,

Whereas:

(1) The European Parliament adopted resolutions on 13 April 1983 on cooperatives in the European Community <sup>(4)</sup>, on 9 July 1987 on the contribution of cooperatives to regional development <sup>(5)</sup>, on 26 May 1989 on the role of women in cooperatives and local employment initiatives <sup>(6)</sup>, on 11 February 1994 on the contribution of cooperatives to regional development <sup>(7)</sup> and on 18 September 1998 on the role of cooperatives in the growth of women's employment <sup>(8)</sup>.

(2) 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 com-

panies 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.

(3) 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. That situation forms a considerable obstacle to the creation of groups of companies from different Member States.

(4) The Council has adopted Regulation (EC) No 2157/2001 <sup>(9)</sup> establishing the legal form of the European Company (SE) according to the general principles of the public limited-liability company. This is not an instrument which is suited to the specific features of cooperatives.

(5) The European Economic Interest Grouping (EEIG), as provided for in Regulation (EEC) No 2137/85 <sup>(10)</sup>, 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.

(6) 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. The United Nations has encouraged all governments to ensure a supportive environment in which cooperatives can participate on an equal footing with other forms of enterprise <sup>(11)</sup>.

<sup>(1)</sup> OJ C 99, 21.4.1992, p. 17 and OJ C 236, 31.8.1993, p. 17.

<sup>(2)</sup> OJ C 42, 15.2.1993, p. 75 and opinion delivered on 14 May 2003 (not yet published in the Official Journal).

<sup>(3)</sup> OJ C 223, 31.8.1992, p. 42.

<sup>(4)</sup> OJ C 128, 16.5.1983, p. 51.

<sup>(5)</sup> OJ C 246, 14.9.1987, p. 94.

<sup>(6)</sup> OJ C 158, 26.6.1989, p. 380.

<sup>(7)</sup> OJ C 61, 28.2.1994, p. 231.

<sup>(8)</sup> OJ C 313, 12.10.1998, p. 234.

<sup>(9)</sup> OJ L 294, 10.11.2001, p. 1.

<sup>(10)</sup> OJ L 199, 31.7.1985, p. 1.

<sup>(11)</sup> Resolution adopted by the General Assembly of the 88th plenary meeting of the United Nations, 19 December 2001 (A/RES/56/114).

- (7) 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.
- (8) 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.
- (9) 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 'second-degree' 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.
- (10) 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.
- (11) Cross-border cooperation between cooperatives in the Community is currently hampered by legal and administrative difficulties which should be eliminated in a market without frontiers.
- (12) The introduction of a European legal form for cooperatives, based on common principles but taking account of their specific features, should enable them to operate outside their own national borders in all or part of the territory of the Community.
- (13) 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.
- (14) In view of the specific Community character of an SCE, the 'real seat' arrangement adopted by this Regulation in respect of SCEs is without prejudice to Member States' laws and does not pre-empt the choices to be made for other Community texts on company law.
- (15) References to capital in this Regulation should comprise solely the subscribed capital. This should not affect any undistributed joint assets/equity capital in the SCE.
- (16) This Regulation does not cover other areas of law such as taxation, competition, intellectual property or insolvency. The provisions of the Member States' law and of Community law are therefore applicable in the above areas and in other areas not covered by this Regulation.

(17) The rules on the involvement of employees in the European cooperative society are laid down in Directive 2003/72/EC <sup>(1)</sup>, and those provisions thus form an indissociable complement to this Regulation and are to be applied concomitantly.

(18) Work on the approximation of national company law has made substantial progress so that certain provisions adopted by the Member State where the SCE has its registered office for the purpose of implementing directives on companies may be referred to by analogy for the SCE in areas where the functioning of the cooperative does not require uniform Community rules, such provisions being appropriate to the arrangements governing the SCE, especially:

- first Council Directive 68/151/EEC of 9 March 1968 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 48 of the Treaty, with a view to making such safeguards equivalent throughout the Community <sup>(2)</sup>,
- fourth Council Directive 78/660/EEC of 25 July 1978 on the annual accounts of certain types of companies <sup>(3)</sup>,
- seventh Council Directive 83/349/EEC of 13 June 1983 on consolidated accounts <sup>(4)</sup>,
- eighth Council Directive 84/253/EEC of 10 April 1984 on the approval of persons responsible for carrying out the statutory audits of accounting documents <sup>(5)</sup>,
- 11th Council Directive 89/666/EEC of 21 December 1989 concerning disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another State <sup>(6)</sup>.

(19) Activities in the field of financial services in particular in so far as they concern credit establishments and insurance undertakings have been the subject of legislative measures pursuant to the following Directives:

- Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions <sup>(7)</sup>,

— Council Directive 92/49/EEC on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance (third non-life insurance Directive) <sup>(8)</sup>.

(20) This form of organisation should be optional,

HAS ADOPTED THIS REGULATION:

## CHAPTER I

### GENERAL PROVISIONS

#### Article 1

#### Form of the SCE

1. A cooperative society may be set up within the territory of the Community in the form of a European Cooperative Society (SCE) on the conditions and in the manner laid down in this Regulation.

2. 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. Where the members of the SCE have limited liability, the name of the SCE shall end in 'limited'.

3. An SCE shall have as its principal object the 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. An SCE may also have as its object the satisfaction of its members' needs by promoting, in the manner set forth above, their participation in economic activities, in one or more SCEs and/or national cooperatives. An SCE may conduct its activities through a subsidiary.

4. An SCE may not extend the benefits of its activities to non-members or allow them to participate in its business, except where its statutes provide otherwise.

<sup>(1)</sup> See page 25 of this Official Journal.

<sup>(2)</sup> OJ L 65, 14.3.1968, p. 8; Directive as last amended by the 1994 Act of Accession.

<sup>(3)</sup> OJ L 222, 14.8.1978, p. 11; Directive as last amended by Directive 2001/65/EC (OJ L 283, 27.10.2001, p. 28).

<sup>(4)</sup> OJ L 193, 18.7.1983, p. 1; Directive as last amended by Directive 2001/65/EC.

<sup>(5)</sup> OJ L 126, 12.5.1984, p. 20.

<sup>(6)</sup> OJ L 395, 30.12.1989, p. 36.

<sup>(7)</sup> OJ L 372, 31.12.1986; Directive as last amended by Directive 2001/65/EC.

<sup>(8)</sup> OJ L 228, 11.8.1992, p. 1; Directive as last amended by Directive 2002/13/EC (OJ L 77, 20.3.2002, p. 17).

5. An SCE shall have legal personality.
6. Employee involvement in an SCE shall be governed by the provisions of Directive 2003/72/EC.

#### Article 2

##### Formation

1. An SCE may be formed as follows:
  - by five or more natural persons resident in at least two Member States,
  - by five or more natural persons and companies and firms within the meaning of the second paragraph of Article 48 of the Treaty and other legal bodies governed by public or private law, formed under the law of a Member State, resident in, or governed by the law of, at least two different Member States,
  - by companies and firms within the meaning of the second paragraph of Article 48 of the Treaty and other legal bodies governed by public or private law formed under the law of a Member State which are governed by the law of at least two different Member States,
  - by a merger between cooperatives formed under the law of a Member State with registered offices and head offices within the Community, provided that at least two of them are governed by the law of different Member States,
  - by conversion of a cooperative formed under the law of a Member State, which has its registered office and head office within the Community if for at least two years it has had an establishment or subsidiary governed by the law of another Member State.
2. A Member State may provide that a legal body the head office of which is not in the Community may participate in the formation of an SCE provided that legal body is formed under the law of a Member State, has its registered office in that Member State and has a real and continuous link with a Member State's economy.

#### Article 3

##### Minimum capital

1. The capital of an SCE shall be expressed in the national currency. An SCE whose registered office is outside the Euro-area may also express its capital in euro.

2. The subscribed capital shall not be less than EUR 30 000.
3. The laws of the Member State requiring a greater subscribed capital for legal bodies carrying on certain types of activity shall apply to SCEs with registered offices in that Member State.
4. The statutes shall lay down a sum below which subscribed capital may not be allowed to fall as a result of repayment of the shares of members who cease to belong to the SCE. This sum may not be less than the amount laid down in paragraph 2. The date laid down in Article 16 by which members who cease to belong to the SCE are entitled to repayment shall be suspended as long as repayment would result in subscribed capital falling below the set limit.
5. The capital may be increased by successive subscriptions by members or on the admission of new members, and it may be reduced by the total or partial repayment of subscriptions, subject to paragraph 4.

Variations in the amount of the capital shall not require amendment of the statutes or disclosure.

#### Article 4

##### Capital of the SCE

1. The subscribed capital of an SCE shall be represented by the members' shares, expressed in the national currency. An SCE whose registered office is outside of the Euro-area may also express its shares in euro. More than one class of shares may be issued.

The statutes may provide that different classes of shares shall confer different entitlements with regard to the distribution of surpluses. Shares conferring the same entitlements shall constitute one class.

2. 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.
3. Shares shall be held by named persons. The nominal value of shares in a single class shall be identical. It shall be laid down in the statutes. Shares may not be issued at a price lower than their nominal value.

4. Shares issued for cash shall be paid for on the day of the subscription to not less than 25 % of their nominal value. The balance shall be paid within five years unless the statutes provide for a shorter period.

5. Shares issued otherwise than for cash shall be fully paid for at the time of subscription.

*Article 5*

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

7. The statutes shall lay down the minimum number of shares which must be subscribed for in order to qualify for membership. If they stipulate that the majority at general meetings shall be constituted by members who are natural persons and if they lay down a subscription requirement for members wishing to take part in the activities of the SCE, they may not make membership subject to subscription for more than one share.

8. When it considers the accounts for the financial year, the annual general meeting shall by resolution record the amount of the capital at the end of the financial year and the variation by reference to the preceding financial year.

At the proposal of the administrative or management organ, the subscribed capital may be increased by the capitalisation of all or part of the reserves available for distribution, following a decision of the general meeting, in accordance with the quorum and majority requirements for an amendment of the statutes. New shares shall be awarded to members in proportion to their shares in the previous capital.

9. The nominal value of shares may be increased by consolidating the shares issued. Where such an increase necessitates a call for supplementary payments from the members under provisions laid down in the statutes, the decision shall be taken by the general meeting in accordance with the quorum and majority requirements for the amendment of the statutes.

10. The nominal value of shares may be reduced by subdividing the shares issued.

11. In accordance with the statutes and with the agreement either of the general meeting or of the management or administrative organ, shares may be assigned or sold to a member or to anyone acquiring membership.

12. An SCE may not subscribe for its own shares, purchase them or accept them as security, either directly or through a person acting in his/her own name but on behalf of the SCE.

An SCE's shares may, however, be accepted as security in the ordinary transactions of SCE credit institutions.

### **Statutes**

1. For the purposes of this Regulation, 'the statutes of an SCE' shall mean both the instrument of incorporation and, when they are the subject of a separate document, the statutes of the SCE.

2. The founder members shall draw up the statutes of the SCE in accordance with the provisions for the formation of cooperative societies laid down by the law of the Member State in which the SCE has its registered office. The statutes shall be in writing and signed by the founder members.

3. The law for the precautionary supervision applicable in the Member State in which the SCE has its registered office to public limited-liability companies during the phase of the constitution shall apply by analogy to the control of the constitution of the SCE.

4. The statutes of the SCE shall include at least:

- 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.

*Article 6***Registered office**

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

*Article 7***Transfer of registered office**

1. The registered office of an SCE may be transferred to another Member State in accordance with paragraphs 2 to 16. Such transfer shall not result in the winding-up of the SCE or in the creation of a new legal person.

2. The management or administrative organ shall draw up a transfer proposal and publicise it in accordance with Article 12, without prejudice to any additional forms of publication provided for by the Member State of the registered office. That proposal shall state the current name, the registered office and number of the SCE and shall cover:

- (a) the proposed registered office of the SCE;
- (b) the proposed statutes of the SCE including, where appropriate, its new name;
- (c) the proposed timetable for the transfer;
- (d) any implication the transfer may have on employees' involvement;
- (e) any rights provided for the protection of members, creditors and holders of other rights.

3. The management or administrative organ 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 for members, creditors, employees and holders of other rights.

4. An SCE's members, creditors and the holders of other rights, and any other body which according to national law can exercise this right, shall be entitled, at least one month before the general meeting called upon to decide on the transfer, to examine, at the SCE's registered office, the transfer proposal and the report drawn up pursuant to paragraph 3 and, on request, to obtain copies of these documents free of charge.

5. Any member who opposed the transfer decision at the general meeting or at a sectorial or section meeting may tender his/her resignation within two months of the general meeting's decision. Membership shall terminate at the end of the financial year in which the resignation was tendered; the transfer shall not take effect in respect of that member. Resignation shall entitle the member to repayment of shares on the conditions laid down in Articles 4(4) and 16.

6. No decision to transfer may be taken for two months after publication of the proposal. Such a decision shall be taken as laid down in Article 62(4).

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

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

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

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

9. The new registration may not be effected until the certificate referred to in paragraph 8 has been submitted and evidence has been produced that the formalities required for registration in the country of the new registered office have been completed.

10. The transfer of an SCE's registered office and the consequent amendment of its statutes shall take effect on the date on which the SCE is registered in accordance with Article 11(1) in the register for its new registered office.

11. When the SCE's new registration has been effected, the registry for its new registration shall notify the register for its old registration. Deletion of the old registration shall be effected on receipt of that notification, but not before.

12. The new registration and the deletion of the old registration shall be publicised in the Member States concerned, in accordance with Article 12.

13. On publication of an SCE's new registration, the new registered office may be relied on as against third parties. However, as long as the deletion of the SCE's registration from the register of its previous registered office has not been publicised, third parties may continue to rely on the previous registered office unless the SCE proves that such third parties were aware of the new registered office.

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

Where an SCE is supervised by a national financial supervisory authority according to Community directives, the right to oppose the change of registered office applies to this authority as well.

Review by a judicial authority shall be possible.

15. An SCE may not transfer its registered office if proceedings for winding-up, including voluntary winding-up, liquidation, insolvency or suspension of payments or other similar proceedings have been brought against it.

16. An SCE which has transferred its registered office to another Member State shall be considered, in respect of any course of action arising prior to the transfer as determined in paragraph 10, as having its registered office in the Member State where the SCE was registered prior to the transfer, even if the SCE is sued after the transfer.

#### Article 8

### Law applicable

1. 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.

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

#### Article 9

### Principle of non-discrimination

Subject to this Regulation, an SCE shall be treated in every Member State as if it were a cooperative, formed in accordance with the law of the Member State in which it has its registered office.

#### Article 10

### Particulars to be stated in the documents

1. The law applicable, in the Member State where the SCE has its registered office, to public limited-liability companies regulating the content of the letters and documents sent to third parties shall apply by analogy to that SCE. The name of the SCE shall be preceded or followed by the abbreviation 'SCE' and, where appropriate, by the word 'limited'.
2. Only SCEs may include the acronym 'SCE' before or after their name in order to determine their legal form.
3. Nevertheless, companies, firms and other legal entities registered in a Member State before the date of entry into force of this Regulation in the names of which the acronym 'SCE' appears shall not be required to alter their names.

#### Article 11

### Registration and disclosure requirements

1. Every SCE shall be registered in the Member State in which it has its registered office in a register designated by the law of that Member State in accordance with the law applicable to public limited-liability companies.
2. An SCE may not be registered unless an agreement on arrangements for employee involvement pursuant to Article 4 of Directive 2003/72/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.

3. In order for an SCE established by way of merger to be registered in a Member State which has made use of the option referred to in Article 7(3) of Directive 2003/72/EC, either an agreement pursuant to Article 4 of the Directive must have been concluded on the arrangements for employee involvement, including participation, or none of the participating cooperatives must have been governed by participation rules before registration of the SCE.

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

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

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

#### Article 12

##### Publication of documents in the Member States

1. Publication of documents and particulars concerning an SCE which must be made public under this Regulation shall be effected in the manner laid down in the laws of the Member State applicable to public limited-liability companies in which the SCE has its registered office.

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

#### Article 13

##### Notice in the *Official Journal of the European Union*

1. Notice of an SCE's registration and of the deletion of such a registration shall be published for information purposes in the *Official Journal of the European Union* after publication in accordance with Article 12. That notice shall state the name, number, date and place of registration of the SCE, the date and place of publication and the title of publication, the registered office of the SCE and its sector of activity.

2. Where the registered office of an SCE is transferred in accordance with Article 7, notice shall be published giving the information provided for in paragraph 1, together with that relating to the new registration.

3. The particulars referred to in paragraph 1 shall be forwarded to the Office for Official Publications of the European Communities within one month of the publication referred to in Article 12(1).

#### Article 14

##### Acquisition of membership

1. Without prejudice to Article 33(1)(b) the acquisition of membership of an SCE shall be subject to the approval of the management or administrative organ. Candidates refused membership may appeal to the general meeting held following the application for membership.

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

Members who are legal bodies shall be deemed to be users by virtue of the fact that they represent their own members provided that their members who are natural persons are users.

Unless the statutes provide otherwise, membership of an SCE may be acquired by natural persons or legal bodies.

2. The statutes may make admission subject to other conditions, in particular:

- subscription of a minimum amount of capital,
- conditions related to the objects of the SCE.

3. Where provided for in the statutes, applications for a supplementary stake in the capital may be addressed to members.

4. An alphabetical index of all members shall be kept at the registered office of the SCE, showing their addresses and the number and class, if appropriate, of the shares they hold. Any party having a direct legitimate interest may inspect the index on request, and may obtain a copy of the whole or any part at a price not exceeding the administrative cost thereof.

5. Any transaction which affects the manner in which the capital is ascribed or allotted, or increased or reduced, shall be entered on the index of members provided for in paragraph 4 no later than the month following that in which the change occurs.

6. The transactions referred to in paragraph 5 shall not take effect with respect to the SCE or third parties having a direct legitimate interest until they are entered on the index referred to in paragraph 4.

7. Members shall on request be given a written statement certifying that the change has been entered.

#### Article 15

### Loss of membership

1. 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.

2. Any minority member who opposed an amendment to the statutes at the general meeting whereby:

- (i) new obligations in respect of payments or other services were introduced; or
- (ii) existing obligations for members were substantially extended; or
- (iii) the period of notice for resignation from the SCE was extended to more than five years;

may tender his/her resignation within two months of the general meeting's decision.

Membership shall terminate at the end of the current financial year in the cases referred to in points (i) and (ii) of the first subparagraph and at the end of the period of notice which applied before the statutes were amended in the case referred to in point (iii) thereof. The amendment to the statutes shall not take effect in respect of that member. Resignation shall entitle the member to repayment of shares on the conditions laid down in Articles 3(4) and 16.

3. The decision to expel a member shall be taken by the administrative or management organ, after the member has been heard. The member may appeal against such a decision to the general meeting.

#### Article 16

### Financial entitlements of members in the event of resignation or expulsion

1. Except where shares are transferred and subject to Article 3, loss of membership shall entitle the member to repayment of his/her part of the subscribed capital, reduced in proportion to any losses charged against the SCE's capital.

2. The amounts deducted under paragraph 1 shall be calculated by reference to the balance sheet for the financial year in which the entitlement to repayment arose.

3. The statutes shall lay down the procedures and conditions for exercising the right to resign and lay down the time within which repayment shall be made, which may not exceed three years. In any event, the SCE shall not be obliged to make the repayment less than six months after approval of the balance sheet issued following the loss of membership.

4. Paragraphs 1, 2 and 3 shall apply also where only a part of a member's shareholding is to be repaid.

## CHAPTER II

### FORMATION

#### Section 1

### General

#### Article 17

### Law applicable during formation

1. Subject to this Regulation, the formation of an SCE shall be governed by the law applicable to cooperatives in the Member State in which the SCE establishes its registered office.

2. The registration of an SCE shall be made public in accordance with Article 12.

#### Article 18

### Acquisition of legal personality

1. An SCE shall acquire legal personality on the day of its registration in the Member State in which it has its registered office, in the register designated by that State in accordance with Article 11(1).

2. If acts are performed in an SCE's name before its registration in accordance with Article 11 and the SCE does not assume the obligations arising out of such acts after its registration, the natural persons, companies, firms or other legal entities which performed those acts shall be jointly and severally liable therefor, without limit in the absence of agreement to the contrary.

## Section 2

### Formation by merger

#### Article 19

#### Procedures for formation by merger

An SCE may be formed by means of a merger carried out in accordance with:

- the procedure for merger by acquisition,
- the procedure for merger by the formation of a new legal person.

In the case of a merger by acquisition, the acquiring cooperative shall take the form of an SCE when the merger takes place. In the case of a merger by the formation of a new legal person, the latter shall take the form of an SCE.

#### Article 20

#### Law applicable in the case of merger

For matters not covered by this section or, where a matter is partly covered by it, for aspects not covered by it, each cooperative involved in the formation of an SCE by merger shall be governed by the provisions of the law of the Member State to which it is subject that apply to mergers of cooperatives and, failing that, the provisions applicable to internal mergers of public limited-liability companies under the law of that State.

#### Article 21

#### Grounds for opposition to a merger

The laws of a Member State may provide that a cooperative governed by the law of that Member State may not take part in the formation of an SCE by merger if any of that Member State's competent authorities opposes it before the issue of the certificate referred to in Article 29(2).

Such opposition may be based only on grounds of public interest. Review by a judicial authority shall be possible.

#### Article 22

### Conditions of merger

1. The management or administrative organ of merging cooperatives shall draw up draft terms of merger. The draft terms of merger shall include the following particulars:

- (a) the name and registered office of each of the merging cooperatives together with those proposed for the SCE;
- (b) the share-exchange ratio of the subscribed capital and the amount of any cash payment. If there are no shares, a precise division of the assets and its equivalent value in shares;
- (c) the terms for the allotment of shares in the SCE;
- (d) the date from which the holding of shares in the SCE will entitle the holders to share in surplus and any special conditions affecting that entitlement;
- (e) the date from which the transactions of the merging cooperatives will be treated for accounting purposes as being those of the SCE;
- (f) the special conditions or advantages attached to debentures or securities other than shares which, according to Article 66, do not confer the status of member;
- (g) the rights conferred by the SCE on the holders of shares to which special rights are attached and on the holders of securities other than shares, or the measures proposed concerning them;
- (h) the forms of protection of the rights of creditors of the merging cooperatives;
- (i) any special advantage granted to the experts who examine the draft terms of merger or to members of the administrative, management, supervisory or controlling organs of the merging cooperatives;
- (j) the statutes of the SCE;
- (k) information on the procedures by which arrangements for employee involvement are determined pursuant to Directive 2003/72/EC.

2. The merging cooperatives may include further items in the draft terms of merger.

3. The law applicable to public limited-liability companies concerning the draft terms of a merger shall apply by analogy to the cross-border merger of cooperatives for the creation of an SCE.

*Article 23***Explanation and justification of the terms of merger**

The administrative or management organs of each merging cooperative 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. The report shall also indicate any special valuation difficulties.

*Article 24***Publication**

1. The law applicable to public limited-liability companies concerning the disclosure requirements of the draft terms of mergers shall apply by analogy to each of the merging cooperatives, subject to the additional requirements imposed by the Member State to which the cooperative concerned is subject.

2. Publication of the draft terms of merger in the national gazette shall, however, include the following particulars for each of the merging cooperatives:

- (a) the type, name and registered office of each merging cooperative;
- (b) the address of the place or of the register in which the statutes and all other documents and particulars are filed in respect of each merging cooperative, and the number of the entry in that register;
- (c) an indication of the arrangements made in accordance with Article 28 for the exercise of the rights of the creditors of the cooperative in question and the address at which complete information on those arrangements may be obtained free of charge;
- (d) an indication of the arrangements made in accordance with Article 28 for the exercise of the rights of members of the cooperative in question and the address at which complete information on those arrangements may be obtained free of charge;
- (e) the name and registered office proposed for the SCE;
- (f) the conditions determining the date on which the merger will take effect pursuant to Article 31.

*Article 25***Disclosure requirements**

1. Any member shall be entitled, at least one month before the date of the general meeting required to decide on the merger, to inspect at the registered office the following documents:

- (a) the draft terms of merger mentioned in Article 22;
- (b) the annual accounts and management reports of the merging cooperatives for the three preceding financial years;
- (c) an accounting statement drafted in accordance with the provisions applicable to the internal mergers of public limited-liability companies, to the extent that such a statement is required by these provisions;
- (d) the experts' report on the value of shares to be distributed in exchange for the assets for the merging cooperatives or the share exchange ratio as provided for in Article 26;
- (e) the report from the cooperative's administrative or management organs as provided for in Article 23.

2. A full copy of the documents referred to in paragraph 1 or, if he/she so wishes, an extract, may be obtained by any member on request and free of charge.

*Article 26***Report of independent experts**

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

2. A single report for all merging cooperatives may be drawn up where this is permitted by the laws of the Member States to which the cooperatives are subject.

3. The law applicable to the mergers of public limited-liability companies concerning the rights and obligations of experts shall apply by analogy to the merger of cooperatives.

*Article 27***Approval of the terms of merger**

1. The general meeting of each of the merging cooperatives shall approve the draft terms of the merger.
2. Employee involvement in the SCE shall be decided upon pursuant to Directive 2003/72/EC. The general meetings of each of the merging cooperatives may reserve the right to make registration of the SCE conditional upon its express ratification of the arrangements so decided.

*Article 28***Laws applicable to formation by merger**

1. The law of the Member State governing each merging cooperative shall apply as in the case of a merger of public limited-liability companies, taking into account the cross-border nature of the merger, with regard to the protection of the interests of:
  - creditors of the merging cooperatives,
  - holders of bonds in the merging cooperatives.
2. A Member State may, in the case of the merging cooperatives governed by its law, adopt provisions designed to ensure appropriate protection for members who have opposed the merger.

*Article 29***Scrutiny of merger procedure**

1. The legality of a merger shall be scrutinised, as regards the part of the procedure concerning each merging cooperative, in accordance with the law of the Member State to which the merging cooperative is subject that apply to mergers of cooperatives and, failing that, the provisions applicable to internal mergers of public limited companies under the law of that State.

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

3. If the law of a Member State to which a merging cooperative is subject provides for a procedure to scrutinise and amend the share-exchange ratio, or a procedure to compensate minority members, without preventing the registration of the merger, such procedures shall apply only if the other merging cooperatives situated in Member States which do not provide for such procedure explicitly accept, when approving the draft terms of the merger in accordance with Article 27(1), the possibility for the members of that merging cooperative to have recourse to such procedure. In such cases, the court, notary or other competent authorities may issue the certificate referred to in paragraph 2 even if such a procedure has been started. The certificate must, however, indicate that the procedure is pending. The decision in the procedure shall be binding on the acquiring cooperative and all its members.

*Article 30***Scrutiny of legality of merger**

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

2. To that end, each merging cooperative shall submit to the competent authority the certificate referred to in Article 29(2) within six months of its issue together with a copy of the draft terms of merger approved by that cooperative.

3. The authority referred to in paragraph 1 shall in particular ensure that the merging cooperatives have approved draft terms of merger in the same terms and that arrangements for employee involvement have been determined pursuant to Directive 2003/72/EC.

4. The said authority shall also satisfy itself that the SCE has been formed in accordance with the requirements of the law of the Member State in which it has its registered office.

*Article 31***Registration of merger**

1. A merger and the simultaneous formation of an SCE shall take effect on the date on which the SCE is registered in accordance with Article 11(1).

2. The SCE may not be registered until all the formalities provided for in Articles 29 and 30 have been completed.

#### Article 32

#### Publication

For each of the merging cooperatives the completion of the merger shall be made public as laid down by the law of the Member State concerned in accordance with the laws governing mergers of public companies limited by shares.

#### Article 33

#### Consequences of merger

1. A merger carried out as laid down in the first indent of the first subparagraph of Article 19 shall have the following consequences *ipso jure* and simultaneously:

- (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.

2. A merger carried out as laid down in the second indent of the first subparagraph of Article 19 shall have the following consequences *ipso jure* and simultaneously:

- (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.

3. Where, in the case of a merger of cooperatives, the law of a Member State requires the completion of any special formalities before the transfer of certain assets, rights and obligations by the merging cooperatives becomes effective against third parties, those formalities shall apply and shall be carried out either by the merging cooperatives or by the SCE following its registration.

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

The first subparagraph shall not apply to the right of workers' representatives to participate in general or section or sectorial meetings provided for in Article 59(4).

5. When the merger has been registered, the SCE shall immediately inform the members of the cooperative being acquired of the fact that they have been entered in the register of members and of the number of their shares.

#### Article 34

#### Legality of the merger

1. A merger as provided for in the fourth indent of Article 2(1) may not be declared null and void once the SCE has been registered.

2. The absence of scrutiny of the legality of the merger pursuant to Articles 29 and 30 shall constitute one of the grounds for the winding-up of the SCE, in accordance with the provisions of Article 74.

#### Section 3

#### Conversion of an existing cooperative into an SCE

#### Article 35

#### Procedures for formation by conversion

1. Without prejudice to Article 11, the conversion of a cooperative into an SCE shall not result in the winding-up of the cooperative or in the creation of a new legal person.

2. The registered office may not be transferred from one Member State to another pursuant to Article 7 at the same time as the conversion is effected.

3. 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 for members and employees of the adoption of the form of an SCE.

4. The draft terms of conversion shall be made public in the manner laid down in each Member State's law at least one month before the general meeting called upon to decide thereon.

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

6. The general meeting of the cooperative in question shall approve the draft terms of conversion together with the statutes of the SCE.

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

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

### CHAPTER III

#### STRUCTURE OF THE SCE

##### Article 36

#### Structure of organs

Under the conditions laid down by this Regulation an SCE shall comprise:

- (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.

#### Section 1

#### Two-tier system

##### Article 37

#### Functions of the management organ; appointment of members

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

2. The member or members of the management organ shall be appointed and removed by the supervisory organ.

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

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

4. The number of members of the management organ or the rules for determining it shall be laid down in the SCE's statutes. However, a Member State may fix a minimum and/or maximum number.

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

##### Article 38

#### Chairmanship and the calling of meetings of the management organ

1. The management organ shall elect a chairman from among its members, in accordance with the statutes.

2. The chairman shall call a meeting of the management organ under the conditions laid down in the statutes, either on his own initiative or at the request of any member. Any such request shall indicate the reasons for calling the meeting. If no action has been taken in respect of such a request within 15 days, the meeting of the management organ may be called by the member(s) who made the request.

##### Article 39

#### Functions of the supervisory organ; appointment of members

1. The supervisory organ shall supervise the duties performed by the management organ. It may not itself exercise the power to manage the SCE. The supervisory organ may not represent the SCE in dealings with third parties. It shall represent the SCE in dealings with the management organ, or its members, in respect of litigation or the conclusion of contracts.

2. The members of the supervisory organ shall be appointed and removed by the general meeting. The members of the first supervisory organ may, however, be appointed in the statutes. This shall apply without prejudice to any employee participation arrangements determined pursuant to Directive 2003/72/EC.

3. Of the members of the supervisory organ, not more than one quarter of the posts available may be filled by non-user members.

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

#### Article 40

### Right to information

1. 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, taking account of any information relating to undertakings controlled by the SCE that may significantly affect the progress of the SCE's business.

2. In addition to the regular information referred to in paragraph 1, the management organ shall promptly communicate to the supervisory organ any information on events likely to have an appreciable effect on the SCE.

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

4. The supervisory organ may undertake or arrange for any investigations necessary for the performance of its duties.

5. Each member of the supervisory organ shall be entitled to examine all information submitted to it.

#### Article 41

### Chairmanship and the calling of meetings of the supervisory organ

1. The supervisory organ shall elect a chairman from among its members. If half of the members are appointed by employees, only a member appointed by the general meeting may be elected chairman.

2. The chairman shall call a meeting of the supervisory organ under the conditions laid down in the statutes, either on his/her own initiative, or at the request of at least one third of its members, or at the request of the management organ. The request shall indicate the reasons for calling the meeting. If no action has been taken in respect of such a request within 15 days, the meeting of the supervisory organ may be called by those who made the request.

#### Section 2

### The one-tier system

#### Article 42

### Functions of the administrative organ; appointment of members

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

2. The number of members of the administrative organ or the rules for determining it shall be laid down in the statutes of the SCE. However, a Member State may set a minimum and, where necessary, a maximum number of members. Of the members of the administrative organ, not more than one quarter of the posts available may be filled by non-user members.

The administrative organ shall, however, consist of at least three members where employee participation is regulated in accordance with Directive 2003/72/EC.

3. The members of the administrative organ, and, where the statutes so provide, their alternate members, shall be appointed by the general meeting. The members of the first administrative organ may, however, be appointed by the statutes. This shall apply without prejudice to any employee participation arrangements determined pursuant to Directive 2003/72/EC.

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

#### Article 43

### Intervals between meetings and the right to information

1. 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, taking account, where appropriate, of any information relating to undertakings controlled by the SCE that may significantly affect the progress of the SCE's business.

2. Each member of the administrative organ shall be entitled to examine all reports, documents and information submitted to it.

#### Article 44

### Chairmanship and the calling of meetings of the administrative organ

1. The administrative organ shall elect a chairman from among its members. If half of the members are appointed by employees, only a member appointed by the general meeting may be elected chairman.

2. The chairman shall call a meeting of the administrative organ under the conditions laid down in the statutes, either on his/her own initiative or at the request of at least one third of its members. The request must indicate the reasons for calling the meeting. If no action has been taken in respect of such a request within 15 days, the meeting of the administrative organ may be called by those who made the request.

#### Section 3

### Rules common to the one-tier and two-tier systems

#### Article 45

#### Term of office

1. Members of SCE organs shall be appointed for a period laid down in the statutes not exceeding six years.

2. Subject to any restrictions laid down in the statutes, members may be re-appointed once or more than once for the period determined in accordance with paragraph 1.

#### Article 46

### Conditions of membership

1. An SCE's statutes may permit a company within the meaning of Article 48 of the Treaty to be a member of one of its organs, provided that the law applicable to cooperatives in the Member State in which the SCE's registered office is situated does not provide otherwise.

That company shall designate a natural person as its representative to exercise its functions on the organ in question. The representative shall be subject to the same conditions and obligations as if he/she were personally a member of the organ.

2. No person may be a member of any SCE organ or a representative of a member within the meaning of paragraph 1 who:

— is disqualified, under the law of the Member State in which the SCE's registered office is situated, from serving on the corresponding organ of a cooperative governed by the law of that State, or

— is disqualified from serving on the corresponding organ of a cooperative governed by the law of a Member State owing to a judicial or administrative decision delivered in a Member State.

3. An SCE's statutes may, in accordance with the law applicable to cooperatives in the Member State, lay down special conditions of eligibility for members representing the administrative organ.

#### Article 47

### Power of representation and liability of the SCE

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

2. 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.

3. 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.

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

*Article 48***Operations requiring authorisation**

1. 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.
2. Paragraph 1 shall apply without prejudice to Article 47.
3. However, a Member State may determine the minimum categories of transactions and the organ which shall give the authorisation which must feature in the statutes of SCEs registered in its territory and/or provide that, under the two-tier system, the supervisory organ may itself determine which categories of transactions are to be subject to authorisation.

*Article 49***Confidentiality**

The members of an SCE's organs shall be under a duty, even after they have ceased to hold office, not to divulge any information which they have concerning the SCE the disclosure of which might be prejudicial to the cooperative's interests or those of its members, except where such disclosure is required or permitted under national law provisions applicable to cooperatives or companies or is in the public interest.

*Article 50***Conduct of the business of organs**

1. Unless otherwise provided by this Regulation or the statutes, 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.

Members who are absent may take part in decisions by authorising another member of the organ or the alternate members who were appointed at the same time to represent them.

2. Where there is no relevant provision in the statutes, the chairman of each organ shall have a casting vote in the event of a tie. There shall be no provision to the contrary in the statutes, however, where half of the supervisory organ consists of employees' representatives.

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

*Article 51***Civil 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.

**Section 4****General meeting***Article 52***Competence**

The general meeting shall decide on matters for which it is given sole responsibility by:

- (a) this Regulation; or
- (b) the legislation of the Member State in which the SCE's registered office is situated, adopted under Directive 2003/72/EC.

Furthermore, the general meeting shall decide on matters for which responsibility is given to the general meeting of a cooperative governed by the law of the Member State in which the SCE's registered office is situated, either by the law of that Member State or by the SCE's statutes in accordance with that law.

*Article 53***Conduct of general meetings**

Without prejudice to the rules laid down in this section, the organisation and conduct of general meetings together with voting procedures shall be governed by the law applicable to cooperatives in the Member State in which the SCE's registered office is situated.

*Article 54***Holding of general meetings**

1. An SCE shall hold a general meeting at least once each calendar year, within six months of the end of its financial year, unless the law of the Member State in which the SCE's registered office is situated applicable to cooperatives carrying on the same type of activity as the SCE provides for more frequent meetings. A Member State may, however, provide that the first general meeting may be held at any time in the 18 months following an SCE's incorporation.

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

3. 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.

4. The general meeting may in the course of a meeting decide that a further meeting be convened and set the date and the agenda.

*Article 55***Meeting called by a minority of members**

Members of the SCE who together number more than 5 000, or who have at least 10 % of the total number of the votes, may require the SCE to convene a general meeting and may draw up its agenda. The above proportions may be reduced by the statutes.

*Article 56***Notice of meeting**

1. A general meeting shall be convened by a notice in writing sent by any available means to every person entitled to attend the SCE's general meeting in accordance with Article 58(1) and (2) and the provisions of the statutes. That notice may be given by publication in the official internal publication of the SCE.

2. The notice calling a general meeting shall give at least the following particulars:

- the name and registered office of the SCE,
- the venue, date and time of the meeting,
- where appropriate, the type of general meeting,

- the agenda, indicating the subjects to be discussed and the proposals for decisions.

3. The period between the date of dispatch of the notice referred to in paragraph 1 and the date of the opening of the general meeting shall be at least 30 days. It may, however, be reduced to 15 days in urgent cases. Where Article 61(4) is applied, relating to quorum requirements, the time between a first and second meeting convened to consider the same agenda may be reduced according to the law of the Member State in which the SCE has its registered office.

*Article 57***Additions to the agenda**

Members of the SCE who together number more than 5 000, or who have at least 10 % of the total number of the votes, may require that one or more additional items be put on the agenda of any general meeting. The above proportions may be reduced by the statutes.

*Article 58***Attendance and proxies**

1. Every member shall be entitled to speak and vote at general meetings on the points that are included in the agenda.

2. Members of the SCE's organs and holders of securities other than shares and debentures within the meaning of Article 64 and, if the statutes allow, any other person entitled to do so under the law of the State in which the SCE's registered office is situated may attend a general meeting without voting rights.

3. A person entitled to vote shall be entitled to appoint a proxy to represent him/her at a general meeting in accordance with procedures laid down in the statutes.

The statutes shall lay down the maximum number of persons for whom a proxy may act.

4. The statutes may permit postal voting or electronic voting, in which case they shall lay down the necessary procedures.

*Article 59***Voting rights**

1. Each member of an SCE shall have one vote, regardless of the number of shares he holds.

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

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

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

3. As regards voting rights which the statutes may allocate to non-user (investor) members, the SCE shall be governed by the law of the Member State in which the SCE has its registered office. Nevertheless, non-user (investor) members may not together have voting rights amounting to more than 25 % of total voting rights.

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

#### Article 60

##### Right to information

1. 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 in accordance with Article 61(1). In so far as possible, information shall be provided at the general meeting in question.

2. The management or administrative organ may refuse to supply such information only where:

- it would be likely to be seriously prejudicial to the SCE,
- its disclosure would be incompatible with a legal obligation of confidentiality.

3. A member refused information may require that his/her question and the grounds for refusal be entered in the minutes of the general meeting.

4. Within the 10 days preceding the general meeting required to decide on the end of the financial year, members may examine the balance sheet, the profit-and-loss account and the notes thereon, the management report, the conclusion of the audit of the accounts by the person responsible and, where a parent company within the meaning of Directive 83/349/EEC is concerned, the consolidated accounts.

#### Article 61

##### Decisions

1. A general meeting may pass resolutions on items on its agenda. A general meeting may also deliberate and pass resolutions concerning items placed on the agenda of the meeting by a minority of members in accordance with Article 57.

2. A general meeting shall act by majority of the votes validly cast by the members present or represented.

3. The statutes shall lay down the quorum and majority requirements which are to apply to general meetings.

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

4. A general meeting may amend the statutes the first time it is convened only if the members present or represented make up at least half of the total number of members on the date the general meeting is convened, and the second time it is convened on the same agenda no quorum shall be necessary.

In the cases referred to in the first subparagraph, at least two thirds of the votes cast validly must be cast in favour, unless the law applicable to cooperatives in the Member State in which the SCE's registered office is situated requires a greater majority.

#### Article 62

##### Minutes

1. Minutes shall be drawn up for every general meeting. The minutes shall include at least the following particulars:

- the venue and date of the meeting,
- the resolutions passed,
- the result of the voting.

2. The attendance list, the documents relating to the convening of the general meeting and the reports submitted to the members on the items on the agenda shall be annexed to the minutes.

3. The minutes and the documents annexed thereto shall be preserved for at least five years. A copy of the minutes and the documents annexed thereto may be obtained by any member upon request against defrayal of the administrative cost.

4. The minutes shall be signed by the chairman of the meeting.

#### Article 63

##### Sectorial or section meetings

1. Where the SCE undertakes different activities or activities in more than one territorial unit, or has several establishments or more than 500 members, its statutes may provide for sectorial or section meetings, if permitted by the relevant Member State legislation. The statutes shall establish the division in sectors or sections and the number of delegates thereof.

2. The sectorial or section meetings shall elect their delegates for a maximum period of four years, unless early revocation takes place. Delegates so elected shall constitute the general meeting of the SCE and shall represent therein their sector or section to which they shall report on the outcome of the general meeting. The provisions of Section 4 of Chapter III shall be applied to the workings of the sectorial and section meetings.

#### CHAPTER IV

##### ISSUE OF SHARES CONFERRING SPECIAL ADVANTAGE

#### Article 64

##### Securities other than shares and debentures conferring special advantages

1. 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.

2. Holders of securities or debentures referred to in paragraph 1 may be given special advantages in accordance with the statutes or the conditions laid down when they are issued.

3. The total nominal value of securities or debentures referred to in paragraph 1 held may not exceed the figure laid down in the statutes.

4. Without prejudice to the right to attend the general meeting provided for in Article 58(2), the statutes may provide for special meetings of holders of securities or debentures referred to in paragraph 1. Before any decision of the general meeting is taken relating to the rights and interests of such holders, a special meeting may state its opinion, which shall be brought to the attention of the general meeting by the representatives which the special meeting appoints.

The opinion referred to in the first subparagraph shall be recorded in the minutes of the general meeting.

#### CHAPTER V

##### ALLOCATION OF PROFITS

#### Article 65

##### Legal reserve

1. Without prejudice to mandatory provisions of national laws, the statutes shall lay down rules for the allocation of the surplus for each financial year.

2. Where there is such a surplus, the statutes shall require the establishment of a legal reserve funded out of the surplus before any other allocation.

Until such time as the legal reserve is equal to the capital referred to in Article 3(2), the amount allocated to it may not be less than 15 % of the surplus for the financial year after deduction of any losses carried over.

3. Members leaving the SCE shall have no claim against the sums thus allocated to the legal reserve.

*Article 66*

### **Dividend**

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.

*Article 67*

### **Allocation of available surplus**

1. 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.

2. The general meeting which considers the accounts for the financial year may allocate the surplus in the order and proportions laid down in the statutes, and in particular:

- carry them forward,
- appropriate them to any legal or statutory reserve fund,
- provide a return on paid-up capital and quasi-equity, payment being made in cash or shares.

3. The statutes may also prohibit any distribution.

## CHAPTER VI

### **ANNUAL ACCOUNTS AND CONSOLIDATED ACCOUNTS**

*Article 68*

#### **Preparation of annual accounts and consolidated accounts**

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

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

2. Where an SCE is not subject, under the law of the Member State in which the SCE has its registered office, to a publication requirement such as provided for in Article 3 of Directive 68/151/EEC, the SCE must at least make the documents relating to annual accounts available to the public at its registered office. Copies of those documents must be obtainable on request. The price charged for such copies shall not exceed their administrative cost.

3. An SCE must draw up its annual accounts and its consolidated accounts if any in the national currency. An SCE whose registered office is outside the euro area may also express its annual accounts and, where appropriate, consolidated accounts, in euro. In that event, the bases of conversion used to express in euro those items included in the accounts which are or were originally expressed in another currency shall be disclosed in the notes on the accounts.

*Article 69*

### **Accounts of SCEs with credit or financial activities**

1. An SCE which is a credit or financial institution shall be governed by the rules laid down in the national law of the Member State in which its registered office is situated under directives relating to the taking up and pursuit of the business of credit institutions as regards the preparation of its annual and, where appropriate, consolidated accounts, including the accompanying annual report and the auditing and publication of those accounts.

2. An SCE which is an insurance undertaking shall be governed by the rules laid down in the national law of the Member State in which its registered office is situated under directives as regards the preparation of its annual and, where appropriate, consolidated accounts including the accompanying annual report and the auditing and publication of those accounts.

*Article 70*

### **Auditing**

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

*Article 71***System of auditing**

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

## CHAPTER VII

**WINDING UP; LIQUIDATION; INSOLVENCY  
AND CESSATION OF PAYMENTS***Article 72***Winding-up, insolvency and similar procedures**

As regards winding-up, liquidation, insolvency, cessation of payments and similar procedures, an SCE shall be governed by the legal provisions which would apply to a cooperative formed in accordance with the law of the Member State in which its registered office is situated, including provisions relating to decision-making by the general meeting.

*Article 73***Winding-up by the court or other competent authority of the Member State where the SCE has its registered office**

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

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

2. When an SCE no longer complies with the requirement laid down in Article 6, the Member State in which the SCE's registered office is situated shall take appropriate measures to oblige the SCE to regularise its situation within a specified period either:

- by re-establishing its head office in the Member State in which its registered office is situated, or
- by transferring the registered office by means of the procedure laid down in Article 7.

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

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

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

*Article 74***Publication of winding-up**

Without prejudice to provisions of national law requiring additional publication, the initiation and termination of winding-up including voluntary winding-up, liquidation, insolvency or suspension of payment procedures and any decision to continue operating shall be publicised in accordance with Article 12.

*Article 75***Distribution**

Net assets shall be distributed in accordance with the principle of disinterested distribution, or, where permitted by the law of the Member State in which the SCE has its registered office, in accordance with an alternative arrangement set out in the statutes of the SCE. For the purposes of this Article, net assets shall comprise residual assets after payment of all amounts due to creditors and reimbursement of members' capital contributions.

*Article 76***Conversion into a cooperative**

1. An SCE may be converted into a cooperative governed by the law of the Member State in which its registered office is situated. No decision on conversion may be taken before two years have elapsed since its registration or before the first two sets of annual accounts have been approved.

2. The conversion of an SCE into a cooperative shall not result in winding-up or in the creation of a new legal person.

3. The management or administrative organ of the SCE 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 of the adoption of the cooperative form for members and holders of shares referred to in Article 14 and for employees.

4. The draft terms of conversion shall be made public in the manner laid down in each Member State's law at least one month before the general meeting called to decide on conversion.

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

6. The general meeting of the SCE shall approve the draft terms of conversion together with the statutes of the cooperative. The decision of the general meeting shall be passed as laid down in the provisions of national law.

#### CHAPTER VIII

##### ADDITIONAL AND TRANSITIONAL PROVISIONS

###### Article 77

##### **Economic and monetary union**

1. If and so long as the third phase of EMU does not apply to it, each Member State may make SCEs with registered offices within its territory subject to the same provisions as apply to cooperatives or public limited-liability companies covered by its legislation as regards the expression of their capital. An SCE may, in any case, express its capital in euro as well. In that event the national currency/euro conversion rate shall be that for the last day of the month preceding that of the formation of the SCE.

2. If and so long as the third phase of EMU does not apply to the Member State in which an SCE has its registered office, the SCE may, however, prepare and publish its annual and, where appropriate, consolidated accounts in euro. The Member State may require that the SCE's annual and, where appropriate, consolidated accounts be prepared and published in the national currency under the same conditions as those laid down for cooperatives and public limited-liability companies governed by the law of that Member State. This shall not prejudice the additional possibility for an SCE of publishing its annual and, where appropriate, consolidated accounts in euro in accordance with Council Directive 90/604/EEC of 8 November 1990 amending Directive 78/660/EEC on annual accounts and Directive 83/349/EEC on consolidated accounts as concerns the exemptions for small and medium-sized companies and the publication of accounts in ecu <sup>(1)</sup>.

#### CHAPTER IX

##### FINAL PROVISIONS

###### Article 78

##### **National implementing rules**

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

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

###### Article 79

##### **Review of the Regulation**

Five years at the latest after the entry into force of this Regulation, the Commission shall forward to the European Parliament and to the Council a report on the application of the Regulation and proposals for amendments, where appropriate. The report shall, in particular, analyse the appropriateness of:

- (a) allowing the location of an SCE's head office and registered office in different Member States;
- (b) allowing provisions in the statutes of an SCE adopted by a Member State in execution of authorisations given to the Member States by this Regulation or laws adopted to ensure the effective application of this Regulation with regard to the SCE which deviate from, or are complementary to, these laws, even when such provisions would not be authorised in the statutes of a cooperative having its registered office in the Member State;

<sup>(1)</sup> OJ L 317, 16.11.1990, p. 57.

- (c) allowing provisions which enable the SCE to split into two or more national cooperatives;

*Article 80*

**Entry into force**

- (d) allowing for specific legal remedies in the case of fraud or error during the registration of an SCE established by way of merger.

This Regulation shall enter into force on the third day following its publication in the *Official Journal of the European Union*.

It shall apply from 18 August 2006.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 22 July 2003.

*For the Council*

*The President*

G. ALEMANNINO

---