



## European Confederation of Worker Cooperatives, Social cooperatives and social and participative enterprises

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### **POSITION OF CECOP CONCERNING THE CONSULTATION ON FUTURE PRIORITIES FOR THE ACTION PLAN ON MODERNISING COMPANY LAW AND ENHANCING CORPORATE GOVERNANCE IN THE EUROPEAN UNION**

**CECOP Aisbl** (European Confederation of Worker Cooperatives, Social COoperatives and Social and Participative Enterprises) groups over 83 000 cooperative and participative enterprises, mainly in industry and services, employing 1.3 million workers across Europe, most of whom are worker-members of their enterprise.

**Question 1 – Overall context. Does the Action Plan address the relevant issues and identify the appropriate tools to enhance the competitiveness of European business? If not, please give your reasons and indicate which measures are not appropriate and/or would be desirable. What are your views on the balance of legislative/non-legislative measures proposed? Are you facing particular obstacles in the conduct of cross-border activities to which, in your opinion, the Action Plan does not provide any satisfactory remedy? Please give your reasons.**

As a first consideration, we would like to emphasise the need for the Commission to work more closely, in the field of corporate governance, with experts in cooperative enterprises, and in particular our experts in cooperatives represented by CECOP, namely in the industrial and service sectors (with the exception of financial and distributive services). This is to ensure that the relevant issues and appropriate tools are identified and addressed in time, in order to understand the specificities and challenges related to cooperative enterprises, or to find timely solutions adapted to such specificities and challenges. In this respect, we wish to express our satisfaction concerning the recent nomination of Mr. Lajos Varady to the Commission's Corporate Governance Working Group as cooperative expert.

**Question 2 - Do you have comments on the proposed application of better regulation principles in the area of corporate governance and company law? Are there other ways in which, in your view, the Commission should be seeking to improve its actions in this field?**

Noting that the *Report of the High Level Group of Company Law Experts on a modern regulatory framework for company law in Europe* of 4<sup>th</sup> November 2002 (which is at the root of the Communication under consultation), and in particular its Chapter VIII concerning “*Co-operatives and other forms of enterprises*” justified the application of corporate governance norms and directives onto cooperatives<sup>1</sup>, it is obvious that European regulation strategy and principles in the field of corporate governance and company law ought to incorporate the views of EU experts coming from cooperatives, and having real business and regulatory experience in cooperatives.

The EU company regulatory framework to come is meant to apply to cooperatives as well. However, it will not be primarily tailored to cooperatives’ specific needs. Such regulatory framework should apply to cooperatives in so far as it does not conflict with the basic characteristics of the latter.

Furthermore, the comprehensive impact assessment mentioned in the document can only be comprehensive if it incorporates comprehensive expertise in the matter under regulation, including expertise in the cooperative form of enterprise.

**Questions 3 and 4. Shareholder Democracy: One share, one vote, and Rights of shareholders. What would be the added value of addressing the issue at EU level? What would be the appropriate form for any EU instrument? Please give your reasons. Are there, in your view, specific elements which any such instrument should cover?**

Cooperatives are an exception to the “*One share, one vote principle*”. This exception however does not identify with any of the others mentioned in the Commission consultation document, and which, reportedly, are characterized by the fact that shareholders do not bear the full financial risk. According to the 2d cooperative principle, cooperatives all over the world are governed by the “one member one vote principle”, irrespective of the amount of shares held by each member (*ILO Recommendation 193/2002 on the Promotion of Cooperatives*, art 3 and annex). At the same time, a cooperative, according to the approved world-wide definition, is “*an autonomous association of persons united voluntarily to meet their common economic, social and cultural needs and aspirations through a jointly owned and democratically controlled enterprise* » (ILO Recommendation 193, art 2).

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<sup>1</sup> See in particular p. 125 “*When these alternative forms operate substantial businesses, fair competition may require extension to them of disclosure and corporate governance standards*”

In particular, the key concept here is the one of **control**: the enterprise is controlled by all the members, who thus bear together the whole financial risk (with a liability for each member limited to the amount of shares he/she holds in the cooperative).

The issue of cooperative principles has already been addressed at the EU level: indeed, those principles are mentioned in the *Commission Communication on the Promotion of Cooperative Societies in Europe (Com(2004)18)* (section 3.2.4. *The use of the ICA cooperative principles*) and in the *Council Regulation (EC) No 1435/2003 on the Statute for a European Cooperative Society (SCE)* (recitals 7 and 8). The cooperative principles in general, and the “one member one vote” principle in particular, as well as the cooperative definition referring to common control, have already been agreed upon at the world level through ILO Recommendation 193 which, as is mentioned in the Commission Communication on the Promotion of Cooperative Societies in Europe, “*was officially approved by that time the Governments of all Member States of the EU as well as by the Governments of all accession and candidate countries* « (section 1.2, *Objectives of the Communication*).

The specific voting system in cooperative corporate governance is an essential element that must be preserved if a cooperative is to remain a cooperative. CECOP may agree to a EU wide instrument in so far it explicitly incorporates the distinctive cooperative voting system as it is expressed in ILO Recommendation 193, and in national cooperative legislations of member states.

#### **Question 5 - Disclosure by investors of their voting policies**

This issue does not directly concern cooperatives, which normally do not have external investors, the share capital being made up of cooperative members' shares.

**Question 6 - Directors' responsibilities and transparency of legal entities . Do you consider that the question of the wrongful trading rules and the issue of directors' disqualification should be addressed at EU-level? Please give your reasons. Which instrument would, in your opinion, be most appropriate? Please give your reasons. If so, are there, in your view, specific elements which any such instrument should cover? Do you consider that any additional measures are needed to enhance transparency for legal entities and/or legal arrangements (e.g. trusts)?**

The question of directors' responsibilities and transparency of legal entity is certainly fundamental in terms of regulatory needs. However, before passing regulations at the EU level in this field, it would be essential to make sure that a number of concepts, eg “wrongful trading rules”, are harmonized at the EU level beforehand.

**Question 7 and 8 - Corporate restructuring and mobility (14<sup>th</sup> Company Law Directive on the transfer of the registered office), and choice between the monistic and dualistic types of board structures. Need for new EU instruments ?**

There is no need for any new instrument for cooperatives for the time being, since the SCE exists, with those 2 items included, and since there is assessment to be done in a few years' time.

**Question 9 - EU level on squeeze out and sell out right of companies. Majority and minority shareholders.**

Cooperatives do not have majority or minority shareholders, given that the cooperative members jointly own and democratically control their own enterprise, without the possibility to transfer shares from one member to another. Cooperative organisations such as CECOP are therefore not stakeholders in this field and it is not for us to diagnose whether this issue should be introduced at the EU level or not. In turn, CECOP requests that cooperatives be expressly and explicitly scoped out, in keeping with their specificities which, in this field, are clearly distinctive.

**Question 10 Groups and pyramids - Should the issues of framework rules for groups and abusive pyramids, in your view, be addressed at EU-level? Please give your reasons. Which instrument would be best designed to deal with this matter? Please give your reasons. Are there, in your view, specific elements which any such instrument should cover?**

CECOP is interested in developing further research and regulation assessment on European transnational horizontal cooperative groups, this need being urgent given the diversity of national and sub-national legislation. As other SMEs, cooperatives may be interested in establishing group relations, in order to protect their members, creditors, clients and contractors, as well as to achieve synergies in scales and resource coordination. We consider that common and joint control, and peer groups by contract, should also be recognised and protected.

Abusive pyramids are a clearly distinct topic that does not widely concern cooperatives, given that they are normally not listed on the stock exchange.

**Question 11 - The European Company. How useful do you judge the ECS to be in practice? Do you consider any modifications are appropriate and desirable? Please give your reasons.**

First of all, it is surprising that the related comment in the consultation document refers to "Societas Europaea" (SE), whereas the question above refers to "ECS" (which apparently is the acronym for European Cooperative Society). This appears to be a drafting mistake. Nevertheless, CECOP wishes to use this opportunity to observe that the European Cooperative

Society is not mentioned in the consultation document (except for the seemingly drafting mistake above), whereas it was mentioned in the Communication on Modernising Company Law and Enhancing Corporate Governance in the European Union (Com(2003)284 final), which is the basis for this consultation. The Communication had a whole section (3.6) dedicated to the European Cooperative Society.

We thus think that we are perfectly entitled to consider that the question above does refer to the European Cooperative Society, whose statutes are being transposed in national legislations (deadline later this year). Only after will it be possible to observe how this instrument is being used in practice and, on this basis, to introduce comments and opinions on possible modifications, in time for the phase in which the Commission will make its first assessment on this instrument and will consider possible modifications.

We wish to request that cooperative experts in general, and our experts in cooperatives in industry and services in particular, work with the Commission, when the assessment of the ECS will be carried out.

**Question 12 - The European Private Company. Do you see value in developing an EPC Statute in addition to the existing European (e.g. Societas Europaea, European Interest Grouping) and national legal forms? Please give your reasons. If so, are there, in your view, specific elements which any such statute should cover?**

Again, we are surprised that in the above enumeration (Societas Europaea, European Interest Grouping), the European Cooperative Society is not mentioned.

Concerning the new proposed instrument, we would like to understand better the motivations for the creation of yet another European entrepreneurial instrument.

**Question 13 – On European foundation statutes. Do you consider it useful to carry out an examination on the feasibility of a European Foundation Statute? Please give your reasons.**

It is surprising that the attempts to establish a European Mutual Society and a European Association, which were mentioned in the Communication on Modernising Company law and Enhancing Corporate Governance in the European Union (section 3.6) are not mentioned.

**Question 14 - Value added on modernising and simplifying European Company Law? Coherence with other actions in related sectors**

We would just like to point out the importance to make sure that there is no overlap with other initiatives in related sectors, in order to ensure coherence between fields of action.