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REPORT

on the proposal for a Council regulation on the Statute for a European
cooperative society
(9923/2002 – C5-0485/2002 – 1991/0388(CNS))

(Renewed consultation)

Committee on Legal Affairs and the Internal Market

Rapporteur: Evelyne Gebhardt

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

CONTENTS

	Page
PROCEDURAL PAGE	4
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION	5
EXPLANATORY STATEMENT	7
OPINION OF THE COMMITTEE ON ECONOMIC AND MONETARY AFFAIRS	9
OPINION OF THE COMMITTEE ON EMPLOYMENT AND SOCIAL AFFAIRS	12

PROCEDURAL PAGE

By letter of 5 March 1992 the Commission submitted to Parliament, pursuant to Article 100a of the EC Treaty, the proposal for a Council regulation on the Statute for a European cooperative society (COM(1991)273 – 1991/0388 (SYN)).

At the sitting of 20 January 1993 Parliament adopted its position on the proposal for a Council regulation.

On 2 December 1993, after the Treaty on European Union had come into force, Parliament confirmed at first reading (A3-0364/93) under the codecision procedure its vote on a European Parliament and Council regulation on the Statute for a European cooperative society (COM(1991)273 – 1991/0388 (COD)).

On 27 October 1999, after the Treaty of Amsterdam had come into force, Parliament confirmed at first reading (A5-0037/1999) its vote of 20 January 1993 with amended numbering of the legal basis (Article 95 of the EC Treaty).

By letter of 11 October 2002 the Council consulted Parliament again, under Article 308 of the EC Treaty, on the amended proposal for a Council regulation on the Statute for a European cooperative society (9923/2002 – 1991/0388(CNS)).

At the sitting of 21 October 2002 the President of Parliament announced that he had referred this proposal to the Committee on Legal Affairs and the Internal Market as the committee responsible and the Committee on Economic and Monetary Affairs and the Committee on Employment and Social Affairs for their opinions (C5-0485/2002).

The Committee on Legal Affairs and the Internal Market had appointed Evelyne Gebhardt rapporteur at its meeting of 29 February 2000.

The committee considered the proposal for a Council regulation and the draft report at its meetings of 29 February 2000, 5 November 2002, 3 December 2002, 20 February 2003 and 23 April 2003.

At the last meeting it adopted the draft legislative resolution by 13 votes, with 13 abstentions.

The following were present for the vote: Giuseppe Gargani, chairman; Willi Rothley, Ioannis Koukiadis and Bill Miller, vice-chairmen; Evelyne Gebhardt, rapporteur; Ulla Maija Aaltonen, Paolo Bartolozzi, Luis Berenguer Fuster (for Maria Berger), Willy C.E.H. De Clercq, Proinsias De Rossa (for François Zimeray, pursuant to Rule 153(2)), Bert Doorn, Raina A. Mercedes Echerer, Janelly Fourtou, Marie-Françoise Garaud, Fiorella Ghilardotti, José María Gil-Robles Gil-Delgado, Malcolm Harbour, The Lord Inglewood, Hans Karlsson, Kurt Lechner, Klaus-Heiner Lehne, Neil MacCormick, Toine Manders, Hans-Peter Mayer (for Marianne L.P. Thyssen), Arlene McCarthy, Manuel Medina Ortega, Astrid Thors, Margrietus J. van den Berg (for Carlos Candal pursuant to Rule 153(2)), Diana Wallis and Stefano Zappalà.

The report was tabled on 30 April 2003.

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a Council regulation on the Statute for a European cooperative society (COM(1991)273 – C5-0485/2002 – 1991/0388(CNS))

(Consultation procedure: renewed consultation)

The European Parliament,

- having regard to the proposal for a Council regulation (9923/2002),
 - having regard to the Commission proposal to the Council (COM(1991)273)¹ and the amended proposal (COM(1993) 252)²,
 - having regard to its position at first reading of 20 January 1993³, confirmed on 2 December 1993⁴ and 27 October 1999⁵,
 - having been consulted again by the Council pursuant to Article 308 of the EC Treaty, (C5-0485/2002),
 - having regard to Rules 67 and 71(2) of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs and the Internal Market and the opinions of the Committee on Economic and Monetary Affairs and the Committee on Employment and Social Affairs (A5-0146/2003),
1. Approves the Council proposal as amended;
 2. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
 3. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Council

Amendment by Parliament

Amendment 1 Citation 1

having regard to the Treaty establishing the European Economic Community, and in particular Article **308** thereof,

having regard to the Treaty establishing the European Economic Community, and in particular Article **95** thereof,

¹ OJ C 99, 21.4.1992, p.37

² OJ C 236, 31.8.1993, p.36

³ OJ C 42, 15.2.1993, p.84

⁴ OJ C 342, 20.12.1993, p.30

⁵ OJ C 154, 5.6.2000, p.22

Justification

Article 95 is a 'lex specialis' in relation to Article 308 of the EC Treaty and is therefore the appropriate legal basis.

EXPLANATORY STATEMENT

On 3 June 2002 the Council agreed – 11 years after the Commission submitted its proposal – on a text for a regulation on the statute for a European cooperative society. As the Council had completely rewritten the Commission proposal since Parliament's first reading¹, it had to consult Parliament again, in line with constant Court of Justice case-law. As the Council took its decision unanimously, it had the option of using Article 308 of the EC Treaty as the legal basis for the legislation, which would mean that Parliament would no longer be part of the codecision procedure under Article 251.

1. Article 308 of the EC Treaty is the wrong legal basis

As Parliament's Legal Service rightly points out², the Council's letter of 11 October 2002 referring the matter to Parliament does not give any reason for changing the legal basis of the Commission's 1991 proposal³.

The argument against the Council's choice of Article 308 of the EC Treaty as the legal basis is that Article 95 (formerly 100a, internal market) is a provision which is a *lex specialis* in relation to Article 308 ECT. According to Court of Justice case-law, Article 308 can be used as the legal basis for a measure only where no other provision of the Treaty gives the Community Institutions the necessary power to adopt the measure in question⁴.

Following the pattern of the 1989 proposal for a statute for a European company⁵, the three 1991 proposals for regulations on a European cooperative society, a European association and a European mutual society took Article 100a (now Article 95) of the EC Treaty as the legal basis.

2. Article 95 of the EC Treaty is the correct legal basis

The proposed regulation creates an independent structure under Community law in parallel to national forms of association. Article 8 of the proposal makes clear that the regulation does not govern the structure by itself, but does so in conjunction with the statutes of the cooperative society in question and the company law of the Member State in which that cooperative society has its registered office.

The regulation is therefore concerned with harmonisation (approximation of laws, thus reducing legal obstacles to the operation of the internal market) and does not intend to superimpose one European model on 15 national company models. As the Court of Justice stated in its judgment of 9 October 2001 on the legal protection of biotechnological inventions, introduction of a new right, such as a Community patent, would require recourse to the legal basis afforded by Article 308 of the EC Treaty⁶. Extending this to the area of

¹ Vayssade report, A3-0001/93, 15.1.1993, OJ C 42, 15.2.1993, p.84

² Point 8 of opinion of 13 January 2003

³ Article 100a of the EC Treaty in the original proposal COM(91) 273, OJ C99, 21.4.1992, p. 17; and amended proposal COM(93)252, OJ C236, 31.8.1993, p. 17

⁴ e.g. C-45/86 of 16 March 1987 – Commission/Council, ECR 1987, p. 1520, Point 13

⁵ COM(89)268, OJ C263, 21.10.1989, p. 41

⁶ C-377/98, judgment of 9 October 2001 – Netherlands v Parliament and Council, point 25

company law, if the proposed regulation were to bring in a completely new, European, form of company law, Article 95 of the EC Treaty (approximation of Member States' laws and administrative provisions) would not be the appropriate legal basis. On the other hand, the Oddy/Rothley¹ and Vayssade² reports in their first reading in Parliament had pointed out that

*'...rejecting Article 100a as the legal basis for the regulation on the grounds that it intended to create new, 'supranational' law and not to harmonise national laws would be to interpret the concept of harmonisation of laws too narrowly. Standardising laws by means of a ... regulation is simply the strongest form of standardisation ... the regulation introduces into company law in the Member States a form of law which from now on is common to all and brings them closer together. In this connection, it should be noted that Article 100a refers to "measures for the approximation of the provisions laid down by law, regulation or administrative action", which includes the regulation ... There should be no question of doubt with regard to the other precondition for application of Article 100a, that the European Company Statute is concerned with "establishment" and "functioning of the internal market".'*³

This argument is still valid after the Maastricht and Amsterdam amendments to the Treaty and is fully applicable to the European cooperative society⁴, as the proposed regulation does not seek to set out exhaustive rules for organising the 'European cooperative society' model, but simply to regulate its structure, and otherwise refers systematically to the national law in the Member State where the society has its registered office. There are also many aspects which it does not regulate, for example tax, competition law, copyright and insolvency.

The European cooperative society contributes to completing the internal market, which is a necessary condition if Article 95 of the EC Treaty is to be the appropriate legal basis, as the Court of Justice has recently reaffirmed⁵.

The proposed regulation harmonises Member States' laws. This harmonisation is necessary for the creation and management of trans-European societies.

¹ A3-0372/90 and A3-0373/90, Explanatory statement, p. 4

² A3-0001/93, Explanatory statement, p.63

³ A3-0372/90 and A3-0373/90, Explanatory statement, p. 4

Translator's note: new translation as text not available

⁴ Vayssade report A3-0001/93 of 15.1.1993, OJ C 42, 15.2.1993 p.84, Parliament resolution A3-0364/93 of 2 December 1993 Paragraph r, OJ C342, 20.12.1993 p. 30, Parliament resolution A5-0037/99 of 27 October 1999, Paragraph XXVIII

⁵ Sale of tobacco products, judgment of 10 December 2002, C-491/01, Point 60

25 March 2003

OPINION OF THE COMMITTEE ON ECONOMIC AND MONETARY AFFAIRS

for the Committee on Legal Affairs and the Internal Market

on the proposal for a European Parliament and Council Regulation on the Statute for a European cooperative society (ECS)
(9923/2002 – C5-0485/2002 – 1991/0388(CNS))

Draftsman: Alexander Radwan

PROCEDURE

The Committee on Economic and Monetary Affairs appointed Alexander Radwan draftsman at its meeting of 27 November 2002.

It considered the draft opinion at its meetings of 18 February, 18 March and 25 March 2003. At the last meeting it adopted the following amendments by 21 votes to 0, with 13 abstentions.

The following were present for the vote Christa Randzio-Plath (chairwoman), José Manuel García-Margallo y Marfil, Philippe A.R. Herzog, John Purvis (vice-chairmen), Alexander Radwan (draftsman), Generoso Andria, Roberto Felice Bigliardo, Armonia Bordes, Hans Udo Bullmann, Bert Doorn (for Renato Brunetta), Harald Ettl (for Giorgos Katiforis), Jonathan Evans, Carles-Alfred Gasòliba i Böhm, Robert Goebbels, Lutz Goepel (for Ingo Friedrich), Lisbeth Grönfeldt Bergman, Mary Honeyball, Othmar Karas, Piia-Noora Kauppi, Christoph Werner Konrad, Werner Langen (for Brice Hortefeux), Astrid Lulling, Thomas Mann (for Hans-Peter Mayer), Ioannis Marinos, David W. Martin, Miquel Mayol i Raynal, Peter Michael Mombaur (for Mónica Ridruejo), Fernando Pérez Royo, Elly Plooij-van Gorsel (for Christopher Huhne), Bernhard Rapkay, Olle Schmidt, Peter William Skinner, Ieke van den Burg (for Pervenche Berès) and Theresa Villiers,

SHORT JUSTIFICATION

The European Parliament is again being consulted on this proposal because the Council - eleven years after the Commission proposal was submitted - has completely rewritten the text of the proposal for a regulation on the Statute for a European cooperative society. As it did in case of the Statute for the European Company, the Council has again chosen Article 308 of the EU Treaty by unanimous decision as the legal basis, and has done so without giving any reason for that change of legal basis.

Article 308 is, however, no more than a 'fall-back' clause of the Treaty, intended to enable action by the Community in those cases where it appears necessary, but for which no special legal basis has been laid down. The European Parliament is, moreover, confined, where Article 308 is used, to consultation only, which is to say that it will not become involved at all until everything has already been decided unanimously in the Council. That approach means that legislative provisions will be adopted that represent only the lowest common denominator between the individual interests of Member States - disproportionately complicated, but adding little of any value to Europe.

What must be kept in mind, however, is that the purpose of the intended arrangement clearly is not to create a completely new set of rules, but to set up a parallel structure in Community law for approximating national legislative provisions for cooperative societies. It is thus a matter of harmonisation measures for the removal of obstacles to the operation of the internal market. The specific legal basis for just such harmonisation measures is to be found precisely in Article 95 of the EC Treaty, which provides, moreover, for the European Parliament to have the right of codecision pursuant to Article 251. That interpretation is supported by the opinion of the EP's Legal Service, which considers Article 95 as the correct legal basis.

The EP had warned the Council that it would not accept any repeat of the approach taken to the European Company Statute; the Council has ignored the warning. In order to safeguard Parliament's law-making function, your draftsman therefore proposes reinstating the legal basis chosen by the Commission in 1991, viz. Article 95, thereby also promoting the use of the codecision procedure.

AMENDMENTS

The Committee on Economic and Monetary Affairs calls on the Committee on Legal Affairs and the Internal Market, as the committee responsible, to incorporate the following amendment in its report:

Text proposed by the Council¹

Amendment by Parliament

Amendment 1
First citation

¹ OJ not yet published

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

Having regard to the Treaty establishing the European Economic Community, and in particular Article **95** thereof,

Justification

Article 95 is the appropriate legal basis for a proposal, the purpose of which is to harmonise national legislative provisions so as to improve the operation of the internal market.

24 March 2003

OPINION OF THE COMMITTEE ON EMPLOYMENT AND SOCIAL AFFAIRS

for the Committee on Legal Affairs and the Internal Market

on the proposal for a Council regulation on the Statute for a European Cooperative Society (SCE)
(COM(1991) 273 – C5-0485/2002 – 1991/0388(CNS))

Draftsman: Lennart Sacrédeus

PROCEDURE

The Committee on Employment and Social Affairs appointed Lennart Sacrédeus draftsman at its meeting of 12 November 2002.

It considered the draft opinion at its meetings of 20 February and 19/20 March 2003.

At the latter meeting it adopted the following amendments unanimously.

The following were present for the vote: Marie-Hélène Gillig, acting chairman; Winfried Menrad, vice-chairman; Marie-Thérèse Hermange, vice-chairman; Lennart Sacrédeus, draftsman; Elspeth Attwooll, Regina Bastos, Hans Udo Bullmann (for Luigi Cocilovo), Philip Bushill-Matthews, Proinsias De Rossa, Harald Ettl, Fiorella Ghilardotti (for Anne-Karin Glase), Roger Helmer, Richard Howitt (for Carlo Fatuzzo), Stephen Hughes, Anne Elisabet Jensen, Rodi Kratsa-Tsagaropoulou, Elizabeth Lynne, Thomas Mann, Claude Moraes, Bartho Pronk, Herman Schmid, Helle Thorning-Schmidt, Ieke van den Burg and Barbara Weiler.

SHORT JUSTIFICATION

Whereas the principal issues relating to worker involvement in the European Cooperative Society (SCE) are subject to a separate proposal, the present proposal's importance with regard to employee rights cannot be underestimated for two principal reasons:

- The Regulation on the Statute of the SCE and the Directive on Worker Involvement are indissociable, with the consequence that political choices relating to one proposal, for example the question of legal base, will inevitably affect also the other proposal.
- Though the details of worker involvement are defined in the directive, the mechanisms to make employee involvement in the SCE actually work largely depend on how the provisions of the directive are linked into the present proposal.

Against this background, the draftsman has chosen three political priorities for his draft opinion:

- A) Insisting on a legal base that grants full codecision rights to the EP;
- B) Ensuring that existing information and consultation requirements are fully respected in the procedure ***prior*** to the registration of an SCE and any subsequent changes in its structure;
- C) Safeguarding employees' rights that existed before the creation of the SCE;

The legal base

The Council has again - as in the case of the European Company Statute - chosen Article 308 as legal base. Article 308 reduces the EP's role in the procedure to mere consultation; but even this consultation is purely formal as the Council's text reaches the EP only after everything has been decided in unanimity in Council. The result of this approach is legislation which merely represents the lowest common denominator between the Member States' individual interests - excessively complicated but with little European added value.

The EP has warned the Council that it would not tolerate a repetition of the Council's position on the European Company Statute. The Council has ignored this warning. To safeguard the EP's role in the legislative process, and based on the opinion of the EP's legal service, which argues in favour of Article 95 of the Treaty as correct legal base, the draftsman proposes to challenge the legal base of the Regulation (AM 1).

Information and consultation rights prior to structural changes relating to the SCE

The draftsman takes the view that the procedure leading up to the formation of an SCE has to be as transparent as possible and that existing employee' rights with regard to information and consultation have to be fully complied with. He therefore proposes a series of amendments which would guarantee both that the expected employment implications of the SCE's establishment be spelled out right from the start and that the employee representatives be given the time to deliver an opinion before the actual decision is taken. As the Draft Regulation addresses the various steps in the lifecycle of an SCE (formation, transfer of registered office, termination), several series of amendments are necessary to adapt these ideas to the various situations referred to in the Draft Regulation. The starting point is the idea that the management or administrative organ shall be obliged to take account of the employment effects of the structural change proposed (AM 3, 8, 15, 24); the employees' representatives shall have the right to deliver an opinion on the planned change (AM 4, 9, 16, 25); it needs to be guaranteed that this opinion is brought in time to the attention of the actual decision makers (AM 5, 10, 17, 26). An effective guarantee for the respect of employee rights is provided for in the case of transfer of registered office and formation by merger, where a certificate by an independent body attesting the correctness of the procedure is foreseen as a precondition for registration (AM 6, 12).

Safeguarding employee rights in general

The draftsman takes the view that the establishment of an SCE shall not result in the employees' losing rights acquired before the formation. A number of amendments refer to this important principle (AM 11, 13, 14, 18, 22, 23, 27).

Miscellaneous

Other amendments concern the relationship between the SCE's statutes and the agreement on employee involvement (AM 2, 7), the appointment and modalities of decision-making of the supervisory organ in the event of employee participation (AM 20, 21) and a level playing field between one-tier and two-tier systems (AM 19).

AMENDMENTS

The Committee on Employment and Social Affairs calls on the Committee on Legal Affairs and the Internal Market, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Council ¹	Amendments by Parliament
Amendment 1 First visa	
Having regard to the Treaty establishing the European Community, and in particular Article 308 thereof,	Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Justification

Article 95 is the most adequate legal base for a proposal focusing on the functioning of the internal market. The proposal introduces a parallel structure to the ones on national cooperative societies already existing in the Member States in order to overcome the obstacles arising from the application of national laws to the European Cooperative Society. It does, however, not create a genuine new legal instrument, but focuses instead primarily on provisions to make the different national rules compatible with each other. The Council's argument that Article 95 cannot be invoked as it is limited to approximation of national law as opposed to the ex nihilo creation of new norms is, therefore, not valid. The view that the proposal is more about approximation of legislation than about creation of new legislation is also highlighted by the fact that out of the 80 Articles comprising the Council proposal 45 make reference to national provisions.

Amendment 2 **Recital 13a (new)**

(13a) With a view to the eventual creation of a uniform legal framework for the functioning of SCEs, this Regulation should aim to be interpreted as encouraging as great a degree of standardisation as possible.

¹ not yet published in OJ

Justification

The current proposal still relies to too great an extent on national legislation, which means that, effectively, there is not one uniform SCE but 15 different systems. Since a single internal market allowing free competition should be the objective, barriers to competition should be removed as far as possible.

Amendment 3 Article 4, paragraph 7

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.

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. ***The statutes shall if necessary lay down the maximum share of capital which a member is entitled to hold.***

Justification

Autonomy of statute should permit the possibility of setting a ceiling on the capital holding of an individual member of a cooperative. This reflects the basic concept of a cooperative as an association of natural persons with the same rights and obligations.

Amendment 4 Article 5, paragraph 4 new indent

- the arrangements for employee involvement determined pursuant to Directive 2002/ /EC;

Justification

The need for inclusion of a reference to the arrangements for employee involvement in the statutes of the SCE is derived directly from Article 11(4) which establishes a direct link between the statutes and these arrangements.

Amendment 5 Article 7, paragraph 3

3. The management or administrative organ shall draw up a report explaining and justifying the legal and economic aspects of the transfer and explaining the implications of the transfer for members, creditors, employees 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.

Justification

Not only in the case of a planned transfer of registered office but also in the case of all events relating to the formation and termination of an SCE, the employment effects of the envisaged structural changes should be clearly spelled out so as to allow for an assessment of whether the changes will lead to (or may be intended to lead to) staff reduction. See similar amendments on Articles 23, 35(3) and 76(3).

Amendment 6 Article 7, paragraph 3a (new)

3a. The body representative of the employees established pursuant to Directive 2002/ /EC shall be given the opportunity to deliver an opinion on the proposed transfer of a registered office in due time before the general meeting

called to decide on the transfer.

Justification

The amendment is part of a series of proposed modifications that aim to ensure proper information and consultation procedures and full transparency in all events relating to changes in the structure of the SCE. It forms a logical link with the amendment on Article 7(3) which requires the management or administrative organ to spell out the employment effects of a planned change in structure, Article 7(4) which requires the management or administrative organ to bring the employees' opinion to the attention of the general meeting, and finally with the amendment on Article 7(8) which provides for a check with regard to the respect of information/consultation requirements before the transfer can be registered. See also similar amendments with regard to the formation of an SCE by merger (Articles 24a (new), 25(1) and 29(2)), the formation of an SCE by conversion (Article 35(3) and (4)) and the reconversion of an SCE into a national cooperative (Article 76(3) and (4)).

Amendment 7 Article 7, paragraph 4

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.

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, the report drawn up pursuant to paragraph 3 **as well as the opinion by the body representative of the employees' pursuant to paragraph 3a** and, on request, to obtain copies of these documents free of charge.

Justification

See justification relating to amendment on Article 7, paragraph 3a (new)

Amendment 8
Article 7, paragraph 8

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.

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 ***as well as the respect of the relevant provisions with regard to the involvement of employee representatives in the procedure leading to the transfer.***

Justification

See justification relating to amendment on Article 7, paragraph 3a (new)

Amendment 9
Article 11, paragraph 4

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 2002/ /EC conflict with the existing statutes, the statutes shall be amended to the extent necessary.

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 2002/ /EC conflict with the existing statutes, the statutes shall be amended to the extent necessary ***within 3 months.***

Justification

The definition of a precise deadline by which the statutes have to be brought in line with the arrangements on worker involvement is crucial to avoid incoherence between the statutes of the SCE and the arrangements for worker involvement, which might give rise to legal uncertainties.

Amendment 10
Article 14, paragraph 1 a (new)

1a. The statutes may provide for a minimum period for a member's membership.

Justification

For many (producers') cooperatives such a provision is needed in order to claim public subsidies. Explicit reference to this option, which the regulation in any case does not preclude, will enhance the autonomy of statutes.

Amendment 11
Article 16, paragraph 4 a (new)

4a. The statutes of an SCE may provide for the member who resigns and thus no longer belongs to the cooperative to be liable, until approval of the accounts of the third financial year after the reference year, to the cooperative and third parties for all obligations that exist at the time of closure of the accounts used as the basis for calculating his entitlements, up to the extent of his previous holding and of any amounts that he has received from any reserve set up under Article 5(4a) (new).

Justification

A required general continuing liability for ex-members of the cooperative, as for five years in the Commission's 1991 draft directive, is not (now) appropriate because it would unfairly worsen the position of the cooperative share in comparison to other forms of holding, such as securities, from the cooperative member's point of view. Moreover some form of liability – anyway limited to the shares – represents a not inconsiderable safeguard for creditors and the remaining members of the cooperative.

Amendment 12
Article 23

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.

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 ***as well as consequences for employment.***

Justification

See justification relating to Article 7, paragraph 3

Amendment 13
Article 24a (new)

24a) The representatives of the employees of each of the merging cooperatives shall, pursuant to the relevant national provisions, and in particular those adopted pursuant to Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees, Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies, Council Directive 98/50/EC of 29 June 1998 amending Directive 77/187/EEC on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the

event of transfers of undertakings, businesses or parts of businesses and Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community be given the opportunity to deliver an opinion on the proposed merger in due time before the general meetings of the merging cooperatives called to decide on the merger.

Justification

See justification relating to Article 7, paragraph 3a (new)

Amendment 14

Article 25, paragraph 1, point (c)a (new)

(ca) the opinion by the representatives of the employees pursuant to Article 24 (a) (new)

Justification

See justification relating to Article 7, paragraph 3a (new)

Amendment 15

Article 27, paragraph 2

2. Employee involvement in the SCE shall be decided upon pursuant to Directive 2002/ /EC. The general meetings of each

2. Employee involvement in the SCE shall be decided upon pursuant to Directive 2002/ /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.

of the merging cooperatives may reserve the right to make registration of the SCE conditional upon its express ratification of the arrangements so decided. ***The employee rights with regard to information, consultation and participation shall under no circumstances be less favourable than those applicable before the merger.***

Justification

The amendment aims at ensuring that the creation of an SCE shall not be used as a means to "escape from employee participation".

Amendment 16 Article 29, paragraph 2

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.

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 ***as well as the respect of the relevant provisions with regard to the involvement of employee representatives in the procedure leading to the merger.***

Justification

See justification relating to Article 7, paragraph 3a (new)

Amendment 17
Article 33, paragraph 4

4. The rights and obligations of the participating cooperatives in relation to 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.

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.

Justification

The amendment spells out more clearly that the provisions of the Article relate not only to individual employment contracts, but also to terms of employment established by collective agreements.

Amendment 18
Article 35, paragraph 1

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.

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. ***The employee rights with regard to information, consultation and participation shall under no circumstances be less favourable than those applicable before the conversion.***

Justification

See justification relating to Article 27, paragraph 2

Amendment 19
Article 35, paragraph 3

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 of the conversion and indicating the implications for members and employees of the adoption of the form of an SCE.

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.

Justification

See justification relating to Article 7, paragraph 3

Amendment 20
Article 35, paragraph 3a (new)

3a. The representatives of the employees of the cooperative shall, pursuant to the relevant national provisions, and in particular those adopted pursuant to Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes

of informing and consulting employees, Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies, Council Directive 98/50/EC of 29 June 1998 amending Directive 77/187/EEC on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses and Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community be given the opportunity to deliver an opinion on the proposed conversion in due time before the general meeting called to decide on the conversion.

Justification

See justification relating to Article 7, paragraph 3(a) (new)

Amendment 21 Article 35, paragraph 4

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.

4. The draft terms of conversion *as well as the opinion by the representatives of the employees pursuant to Article 35(3a) (new)* 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.

Justification

See justification relating to Article 7, paragraph 3(a) (new)

Amendment 22
Article 35, paragraph 8

8. The rights and obligations of the cooperative to be converted on 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.

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.

Justification

See justification relating to Article 33, paragraph 4

Amendment 23
Article 37, paragraph 5

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.

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

Justification

The amendment aims to establish a level playing field between one-tier and two-tier systems. It introduces an obligation to allow the existence of two-tier systems in all Member States equivalent to the obligation to allow the existence of one-tier systems foreseen in Article 42(2).

Amendment 24 Article 39, paragraph 2

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 2002/ /EC.

2. The members of the supervisory organ shall be appointed and removed by the general meeting. ***Where employee participation is practised, the employee representatives shall be appointed according to relevant national customs or legal provisions of the Member States governing the appointment of employees to the bodies of national cooperatives.*** 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 2002/ /EC.

Justification

The amendment clarifies that those members of the supervisory organ who represent the employees are by definition to be appointed by the employees, and not by the general meeting.

Amendment 25
Article 50, paragraph 3

3. Where employee participation is provided for in accordance with Directive 2002/ /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.

3. Where employee participation is provided for in accordance with Directive 2002/ /EC, **the** Member State *shall* 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.

Justification

Amendment 26
Article 59, paragraph 4

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.***

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.

Justification

This amendment aims to remove a provision from the text of the Regulation which would excessively reduce participation rights: on the one hand the threshold indicated in the draft proposal is purely random; on the other hand it is not clear why the transfer of a registered office of the SCE, which does not involve per se any transfer of sectoral activities from one Member State to another, should result in an automatic loss of employee participation rights with regard to the section or sectoral meetings.

Amendment 27 Article 76, paragraph 2

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

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

The employee rights with regard to information, consultation and participation shall under no circumstances be less favourable than those applicable before the conversion.

Justification

See justification relating to Article 27, paragraph 2

Amendment 28 Article 76, paragraph 3

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 of the conversion and indicating the implications of the adoption of the

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

cooperative form for members and holders of shares referred to in Article 14 and for employees.

of the adoption of the cooperative form for members and holders of shares referred to in Article 14 and for employees.

Justification

See justification relating to Article 7, paragraph 3

Amendment 29
Article 76, paragraph 3a (new)

3a. The body representative of the employees established pursuant to Directive 2002/ /EC shall be given the opportunity to deliver an opinion on the proposed conversion in due time before the general meeting called to decide on the conversion.

Justification

See justification relating to Article 7, paragraph 3(a) (new)

Amendment 30
Article 76, paragraph 4

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.

4. The draft terms of conversion **as well as the opinion by the body representative of the employees pursuant to Article 76(3a) (new)** 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.

Justification

See justification relating to Article 7, paragraph 3(a) (new)

Amendment 31
Article 76, paragraph 6a (new)

6a. The rights and obligations of the SCE to be converted as regards 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 be transferred to the cooperative.

Justification

This amendment establishes for the reconversion of a SCE into a national cooperative equivalent provisions as applying in the case of the formation of a SCE.

Amendment 32
Article 79, introductory part

Five years at the latest after the entry into force of this Regulation, the Commission shall forward to the European Parliament and 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:

Five years at the latest after the entry into force of this Regulation, the Commission shall forward to the European Parliament and the Council a report on the application of the Regulation and proposals for amendments, where appropriate. The report shall, in particular, analyse ***the effects of this Regulation on employment and competitiveness within the Union and on small and medium-sized cooperatives, and in particular any obstacles to their forming an SCE*** and the appropriateness of:

Justification

A shorter period for reporting back is aimed to remedy more quickly any shortcomings that are found to exist in the Regulation. Within the context of the Lisbon Agenda the Union should also be assessing whether new pieces of legislation are having positive effects on growth and employment or not.