

Council Regulation (EC) No 1435/2003 of 22 July 2003
on the Statute for a European Cooperative Society (SCE)

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.

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

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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.

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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.

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.

Article 5

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.

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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:

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- 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. [^{X1}Resignation shall entitle the member to repayment of shares on the conditions laid down in Articles 3(4) and 16.]

6 No decision to transfer may be taken for two months after publication of the proposal. [^{X1}Such a decision shall be taken as laid down in Article 61(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.

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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.

Editorial Information

- XI** Substituted by [Corrigendum to Council Regulation \(EC\) No 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society \(SCE\) \(Official Journal of the European Union L 207 of 18 August 2003\)](#).

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;

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- (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

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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

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- (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.

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