

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

CHAPTER II

FORMATION

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.

Status: Point in time view as at 21/08/2003.

*Changes to legislation: There are currently no known outstanding effects for the
 Council Regulation (EC) No 1435/2003, Section 2. (See end of Document for details)*

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;
- [^{X1}f the special conditions or advantages attached to debentures or securities other than shares which, according to Article 64, do not confer the status of members;]
- 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.

Editorial Information

- X1** 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 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.

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Changes to legislation: There are currently no known outstanding effects for the Council Regulation (EC) No 1435/2003, Section 2. (See end of Document for details)

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.

Status: Point in time view as at 21/08/2003.

Changes to legislation: There are currently no known outstanding effects for the Council Regulation (EC) No 1435/2003, Section 2. (See end of Document for details)

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.

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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.

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Changes to legislation: There are currently no known outstanding effects for the Council Regulation (EC) No 1435/2003, Section 2. (See end of Document for details)

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.

[^{X12} 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 73.]

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