

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

CHAPTER III

**STRUCTURE OF THE SCE**

*Article 36*

**Structure of organs**

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

- (a) a general meeting; and
- (b) either a supervisory organ and a management organ (two-tier system) or an administrative organ (one-tier system) depending on the form adopted in the statutes.

Section 1

**Two-tier system**

*Article 37*

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

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

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

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

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

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

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

#### *Article 38*

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

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

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

#### *Article 39*

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

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

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

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

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

#### *Article 40*

### **Right to information**

1 The management organ shall report to the supervisory organ at least once every three months on the progress and foreseeable developments of the SCE's business, taking account of any information relating to undertakings controlled by the SCE that may significantly affect the progress of the SCE's business.

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

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

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

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

#### *Article 41*

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

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

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

#### Section 2

### **The one-tier system**

#### *Article 42*

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

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

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

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

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

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

#### *Article 43*

### **Intervals between meetings and the right to information**

1 The administrative organ shall meet at least once every three months, at intervals laid down in the statutes, to discuss the progress of and foreseeable development of the SCE's business, taking account, where appropriate, of any information relating to undertakings controlled by the SCE that may significantly affect the progress of the SCE's business.

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

#### *Article 44*

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

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

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

#### Section 3

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

#### *Article 45*

### **Term of office**

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

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

#### *Article 46*

### **Conditions of membership**

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

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

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

- is disqualified, under the law of the Member State in which the SCE's registered office is situated, from serving on the corresponding organ of a cooperative governed by the law of that State, or
- is disqualified from serving on the corresponding organ of a cooperative governed by the law of a Member State owing to a judicial or administrative decision delivered in a Member State.

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

#### *Article 47*

### **Power of representation and liability of the SCE**

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

2 Acts performed by an SCE's organs shall bind the SCE vis-à-vis third parties, even where the acts in question are not in accordance with the objects of the SCE, providing they do not exceed the powers conferred on them by the law of the Member State in which the SCE has its registered office or which that law allows to be conferred on them.

Member States may, however, provide that the SCE shall not be bound where such acts are outside the objects of the SCE, if it proves that the third party knew that the act was outside those objects or could not in the circumstances have been unaware of it; disclosure of the statutes shall not of itself be sufficient proof thereof.

3 The limits on the powers of the organs of the SCE, arising under the statutes or from a decision of the competent organs, may never be relied on as against third parties, even if they have been disclosed.

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

#### *Article 48*

### **Operations requiring authorisation**

1 An SCE's statutes shall list the categories of transactions requiring:

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- under the two-tier system, authorisation from the supervisory organ or the general meeting to the management organ,
- under the one-tier system, an express decision adopted by the administrative organ or authorisation from the general meeting.

2 Paragraph 1 shall apply without prejudice to Article 47.

3 However, a Member State may determine the minimum categories of transactions and the organ which shall give the authorisation which must feature in the statutes of SCEs registered in its territory and/or provide that, under the two-tier system, the supervisory organ may itself determine which categories of transactions are to be subject to authorisation.

#### *Article 49*

### **Confidentiality**

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

#### *Article 50*

### **Conduct of the business of organs**

1 Unless otherwise provided by this Regulation or the statutes, the internal rules relating to quorums and decision-taking in SCE organs shall be as follows:

- a quorum: at least half of the members with voting rights must be present or represented;
- b decision-taking: a majority of the members with voting rights present or represented.

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

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

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

#### *Article 51*

### **Civil liability**

Members of management, supervisory and administrative organs shall be liable, in accordance with the provisions applicable to cooperatives in the Member State in which

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the SCE's registered office is situated, for loss or damage sustained by the SCE following any breach on their part of the legal, statutory or other obligations inherent in their duties.

#### Section 4

### General meeting

#### Article 52

### Competence

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

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

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

#### Article 53

### Conduct of general meetings

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

#### Article 54

### Holding of general meetings

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

2 General meetings may be convened at any time by the management organ or the administrative organ, the supervisory organ or any other organ or competent authority in accordance with the national law applicable to cooperatives in the Member State in which the SCE's registered office is situated. The management organ shall be bound to convene a general meeting at the request of the supervisory organ.

3 The agenda for the general meeting held after the end of the financial year shall include at least the approval of the annual accounts and the allocation of profits.

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

#### *Article 55*

### **Meeting called by a minority of members**

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

#### *Article 56*

### **Notice of meeting**

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

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

- the name and registered office of the SCE,
- the venue, date and time of the meeting,
- where appropriate, the type of general meeting,
- the agenda, indicating the subjects to be discussed and the proposals for decisions.

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

#### *Article 57*

### **Additions to the agenda**

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

#### *Article 58*

### **Attendance and proxies**

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

2 Members of the SCE's organs and holders of securities other than shares and debentures within the meaning of Article 64 and, if the statutes allow, any other person entitled



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to do so under the law of the State in which the SCE's registered office is situated may attend a general meeting without voting rights.

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

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

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

#### *Article 59*

#### **Voting rights**

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

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

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

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

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

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

#### *Article 60*

#### **Right to information**

1 Every member who so requests at a general meeting shall be entitled to obtain information from the management or administrative organ on the affairs of the SCE arising from

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items on which the general meeting may take a decision in accordance with Article 61(1). In so far as possible, information shall be provided at the general meeting in question.

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

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

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

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

#### *Article 61*

#### **Decisions**

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

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

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

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

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

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

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## *Article 62*

### **Minutes**

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

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

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

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

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

## *Article 63*

### **Sectorial or section meetings**

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

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

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