

Brussels 16 June 2011

## Consultation document on the results of the study on the European Cooperative Society (SCE)

Comments submitted by AMICE, Register of interest representatives: 62503501759-81

### **Question 1. Name of your legal entity, organisation, or service, its legal form, country of origin, size and field of activity.**

The Association of Mutual Insurers and Insurance Cooperatives in Europe (AMICE) represents the mutual and cooperative insurance sector in Europe, with over 100 direct members and several national associations of mutual/cooperative insurers. More than two thirds of all insurers in Europe belong to the mutual and cooperative insurance sector which accounts for close to 25% of all insurance premiums paid by European policyholders. Mutual insurers add to the diversity and competitiveness of the European insurance market and provide a wider choice for consumers. In addition, many of them were and still are created to remedy market imperfections by offering insurance cover in difficult, very small or specific sectors.

### **Question 2. Do you agree with the findings of the study on the negative and positive factors affecting the setting up an SCE?**

We very much support the analysis proposed by the Euricse study as to the positive and negative factors which have affected the setting up of SCEs.

Regarding the positive factors, while recognising the so far merely symbolic value of the SCE, we would also tend to believe in the inherent benefits of a 28<sup>th</sup> regime, pan-European legal instrument, for the citizens and businesses living in the EU.

As to the negative factors, we believe that the most difficult hurdle to overcome is the complexity of the current regulation and in particular, the lack of clarity regarding the role played by each source of SCE law and their interplay as well as the many references to national law.

Additionally we think that the SCE's lack of pan European provisions concerning fiscal implications (in particular regarding the distribution of profits) creates additional problems.

### **Question 3. Do you agree with the study's assessment that the initial minimum capital requirement is a considerable cost for the setting up of SCEs?**

Undoubtedly, for small and medium sized entities, the current capital requirement can constitute an obstacle to the creation of an SCE. Furthermore, a very low or zero capital

requirement should exist for cooperative companies wishing to set up an SCE as a holding company. In that case, the issue of the solvency of the European legal structure is irrelevant as it would be provided by the constituting members of the SCE.

**Question 4. Do you believe that the complexity of the Regulation, particularly due to the hierarchy of various legal rules, is a negative factor for the start up phase of SCE?**

As mentioned above (answer to question 2), we agree with the authors of the study that the current complexity of the hierarchy between existing rules may have a dissuasive effect on potential interested parties. We also believe that an SCE free from national references (like a 28<sup>th</sup> regime) would constitute an improvement.

**Question 5: Are you of the view that the cross-border requirement for the creation of an SCE (two founders from at least two Member State -MS) may be changed, in order to allow the creation of SCEs also by operators of a single MS and under which conditions?**

In our opinion, the cross-border requirement should always be included in a European company law statute in order to avoid 'opportunistic' creations of SCEs whose sole purpose would be to escape their national jurisdiction.

**Question 6. Do you agree with the statement of the study that the system of reference to national laws (with a distinction between cooperative legislation and national public limited liability company law) should be simplified and even reduced?**

Given that not all national legislations have the same level of granularity regarding cooperative societies; it would seem wise to follow the recommendations of the authors of the study; i.e. not to go as far as distinguishing which law is relevant when referring to national laws.

**Question 7: Do you think that SCEs should be given more autonomy from national laws, in the sense that SCEs should be allowed to include in their articles of association rules which may deviate from national legislation applied to national cooperatives?**

We strongly believe that the SCE should constitute a European toolkit for cooperatives, i.e. allowing them to take a certain distance from national provisions. This means that SCEs should be allowed to provide for a certain degree of self regulation, i.e. in the fields where cooperatives have their own features such as governance. In other words, the regulation should respect various national approaches to cooperative identity in areas where a range of approaches exists.

**Question 8. Do you believe that the number of options allowing the application of national laws should be limited to certain issues and what are these issues (e.g. areas where the matter at stake is crucial in the light of the cooperative identity like rules on voting rights, investor non user members, surpluses' distribution, etc)?**

As mentioned in the answer to question 7, the rules relating to a cooperative's governance should be contained in the SCE's statutes.

**Question 9. Do you have any suggestions for amendments of the SCE Regulation that would increase its attractiveness for businesses and particularly for small enterprises?**

On top of the recommendations made above (which coincide with the Euricse study), we would like to add some guidance on general principles of company law, contained in the report published a few weeks ago by the group of experts on company law (and on their reflections during the conference organized for the launch of the report):

- company law should be flexible and provide freedom of choice;
- one size does not fit all;
- need for efficient, simple, cross-border instruments
- Member States cannot use the EU law to export their national systems

**Question 10. What are in your view the most important legal issues to consider for entrepreneurs when deciding to create either a national cooperative or an SCE, or when assessing in which country to place or transfer the head office of an SCE? (e.g. are they of fiscal, company or labour law nature?)**

We believe that the distinguishing factor when deciding between a national cooperative or an SCE is the freedom of organisation granted by the statutes of the SCE. This needs to be fostered by the regulation with a reduced amount of references to national legislations.

Further elements to be taken into accounts are the fiscal arrangements and labour laws.

**Question 11. Can you provide examples of practical problems you have encountered in the course of setting up or running of a national cooperative or of an SCE? Or any difficulties you had with respect to the objectives or the sector activities that a cooperative is allowed to pursue, or if there are sectors where cooperatives cannot operate?**

**Question 12. Do you have any comments on the national report of your country? (Part II)**