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**CONSULTATION PAPER**

**Co-operatives in Enterprise Europe**

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## **CONSULTATION PAPER**

### **Co-operatives in Enterprise Europe**

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## **1. INTRODUCTION**

This document is about co-operative enterprises in the European Union and in the wider Europe and how they fulfil the needs and aspirations of their members and other stakeholders. It will consider the difficulties co-operatives face due to their specific character, and the contribution they can make to European economy and society.

Co-operatives are enterprises. They face similar problems to traditionally capitalised (investor-driven) firms – concentrations, globalisation, organisational and technological change, and the changing needs of clients. However co-operatives also face particular challenges due to their specific nature as democratically controlled organisations providing equitable economic benefits to their members.

In order to be successful co-operatives must be competitive whilst maintaining their special nature as businesses that are user-driven, democratically owned and managed by their members. In the case of co-operatives, success does not only mean high profitability of the company itself, but the improved wellbeing, financial or otherwise, of its members (be they enterprises or persons) and the community (geographical or other) in which they are active.

Co-operatives are an important part of the European economy; the 132 000 co-operative enterprises in the E.U. employ 2.3 million people. The performance of co-operatives has a major impact on the lives of their 83.5 million members and on the citizens of Europe. They deliver wellbeing to citizens, wealth to nations, promote entrepreneurship and participation.

More established co-operatives are represented in many sectors of industry. They account for a substantial part of these sectors and are of great importance to the economy of most Member States. They contribute to the effective organisation of markets in many sectors.

New forms of co-operatives are also emerging, particularly in social and welfare sectors where they deliver services, employment, welfare and participation in social life to those who are excluded and in need. In many sectors co-operatives enable “non-traditional entrepreneurs”, citizens that would otherwise be excluded from business, to assume entrepreneurial responsibilities.

Co-operative structures are well adapted to assisting small and medium-sized enterprises to form groupings and sustainable networks through which they can develop common services and gain the critical mass necessary for accessing public markets and achieving economies of scale. Through co-operative structures small enterprises can gain negotiating power in increasingly competitive and concentrating markets, whilst retaining independence and control over their own operations. As such they provide a valuable bridge between the forces of globalisation and local economic activity. Professionals in the knowledge-based occupations, and in other new sectors, have used co-operative structures to establish enterprises, over which they maintain control and influence in the strategic decision making and governance. In several Member States co-operatives have demonstrated a capacity for providing an economically competitive and sustainable solution for a fusion of the information society and socio-economic development.

The Commission acknowledges the importance of the variety of economic structures in Europe’s mixed market in developing the welfare and economic prosperity of its citizens. Co-operatives are an important part of such a varied and mixed market economy and therefore their interests must be protected and promoted on a non-discriminatory basis. All types of co-

operatives must be able to freely develop their activities in order to fulfil market demand and the needs of their members without unfair or unnecessary legal or regulatory barriers to their activities, both at the Community level and at Member State level.

The activities of the European Union already affect co-operatives in many ways. Co-operatives take advantage of Community policy instruments and programmes in such fields as regional development, employment policy, structural funds, research and training.

The proper consideration of co-operatives in the range of relevant Community policies and programmes can be called “mainstreaming”. The mainstreaming principle applies to enterprise policies and programmes, but also to those of many other directorates of the Commission which may have an impact on co-operatives.

One of the keys to achieving optimum use of existing Community instruments lies in widening the understanding of co-operatives among decision-makers at all levels. The importance of such wider recognition and understanding of the sector came out strongly in the discussions and consultation meetings held during the preparation of this document.

In this Document the role and importance of co-operative enterprises in the economic, social and cultural life of European Union is acknowledged. However a detailed analyses of particular sectors in which co-operatives are active or important has been avoided in favour of an analysis of the characteristics that are common to all co-operatives and influence their development. The document suggests orientations for potential future Community policies and activities to reinforce the contribution of co-operative enterprises towards improving European competitiveness and to achieving a wide range of other objectives of the European Union. The document makes recommendations of relevance to the regulation of co-operatives in Member States where appropriate. It also draws attention to the need for more enabling and comprehensive European regulation in the form of the European Co-operative Statute.

## **2. ANALYSIS OF THE CO-OPERATIVE ENTERPRISE PHENOMENON IN EUROPE**

### **2.1. What is a Co-operative**

A co-operative is an enterprise like any other, but it is also an enterprise that exists to serve the needs of the members who own and control it, rather than solely to provide a return on investment. All enterprises exist to serve the interests of their cardinal stakeholder groups. For traditional companies that means investors, however in a co-operative returns on capital (which are in some cases permitted) must always be subordinated to other interests. In fact a non-co-operative enterprise might be called an association of capital (or investor-driven business) whereas a co-operative is an association of people (or people-driven business). There is a place in a modern mixed market economy for a model of business that is driven by the needs of the people who use its services rather than those who invest their capital in it. Indeed such forms assist the efficient and sustainable functioning of markets.

According to the definition of the International Co-operative Alliance (ICA) a co-operative is an autonomous association of persons united voluntarily to meet their common economic, social and cultural needs and aspirations through a jointly owned and democratically controlled enterprise <sup>1</sup>.

The defining characteristics for a co-operative are:

- Possibility of free and voluntary association and withdrawal from the enterprise;
- Democratic structure, where each member has one vote (or a limited amount of votes), majority decision making and an elected leadership accountable to its members;
- Equitable, fair and just distribution of economic results.

A co-operative can adopt any kind of legal form, which can be adapted to the above definition and characteristics. A co-operative does not necessarily require specific co-operative legislation, its co-operative nature can be defined by its internal statutes (by-laws or articles of association). However specific co-operative laws exist in most Member States (see Annex 1) and provide an adapted framework for their operation and the protection of members and third parties.

Co-operatives vary considerably in size, sector and type of membership. The traditions of co-operatives vary considerably between Member States. The benefits that members and other stakeholders achieve from their transactions with the co-operatives also vary greatly. A co-operative can be active in almost any field where there is a group with fairly homogeneous and common needs. For example:

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<sup>1</sup> ICA News, No 5/6, 1995. The International Labour Organisation (ILO) has recently proposed a recommendation to its member states that follows basically the lines of ICA definition ILO, 2001, Promotion of co-operatives, International Labour Conference 89<sup>th</sup> Session 2001, Report V(2), furthermore the Committee on the Promotion of Co-operatives on the 89<sup>th</sup> International Labour Conference (5-21 June 2001) included in its proposition to the next conference the “*active participation of the members to the democratic management*”. Report by the national co-operative organisations of the Committee, September 2001, p. 63.

- Where the members are **farmers**, the benefits will include quality inputs at fair (equitable) prices and economies of scale in adding value to, marketing and distributing produce;
- Where the members are **consumers**, the benefits will include the availability of quality goods at fair (equitable) prices;
- Where the members are independent **retailers**, the benefits will include economies of scale in marketing and distribution, and greater common buying power;
- Where the members are **workers**, the benefits will include participation in the management of their enterprise and a fair (equitable) reward for their labour;
- Where the members are **primary producers**, the benefits will include access to markets for their produce and more control over the value added;
- Where the members are **savers or borrowers**, the benefits will include a fair (equitable) return on their savings and access to credit at a fair (equitable) rate of interest.

It is particularly useful to divide co-operatives into three categories according to the interest of their main stakeholders and members/owners:

- **Customer co-operatives** where the consumers of the services of the co-operative own the business;
- **Client (producers) co-operatives** where producers of certain products or services own the co-operative for purpose of marketing or further processing their products and services, or to purchase jointly raw materials or means of production.
- **Employee owned co-operatives**, where the employees of the business own the enterprise.

Co-operative members may be either physical persons or legal persons. Co-operatives of legal persons can be an effective form of business co-operation, alongside for example networking, strategic alliances and franchising.

An interesting recent development is **Multi-stakeholder co-operatives**<sup>2</sup>. These can accommodate wider interests than traditional co-operatives (which are oriented to members' interests) or capital companies (which are oriented towards investors' interests). These stakeholders may include employees, consumers, local authorities and local enterprises.

A further distinction can be made between “**first tier**” and “**second tier**” co-operatives, the former being constituted of individual (physical or legal) persons, the latter being a “co-operative of co-operatives”. Second tier co-operatives are usually established to provide common services (buying, marketing, distribution etc.) to member co-operatives. They are controlled by their member co-ops and their democratic structures are normally based on a board composed of persons elected by the boards of the member co-operatives.

Co-operative enterprises tend to be very sensitive to their social responsibilities. Their first responsibility is naturally towards their members, but their decentralised and democratic nature means that they are firmly rooted in local and regional communities. Their decisions

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<sup>2</sup> For example Italian social co-operatives for insertion, or the recently adopted Société Coopératif d'Intérêt Collectif (SCIC) in France (June 2001).

are therefore more likely to take into account these interests than in a company where returns on capital are the primary concern.

As one type of economical co-operation, co-operatives have certain similar features to mutuals and associations in their organisation and objectives. These types of organisation are therefore collectively referred to as the “social economy” in some Member States. Credit Unions and worker controlled companies (such as the *Sociedades Anónimas Laborales* in Spain) also have many similarities to co-operatives, but are excluded from the scope of this document on the basis that they do not entirely fulfil all of the co-operative principles of the ICA definition.

## **2.2. The Importance of Co-operatives in Economic Sectors**

Business registers tend to underestimate the importance of co-operatives in Europe. Co-operatives exist in a wide variety of legal forms, and in some Member States no specific co-operative law exists. Many co-operatives are therefore “invisible” in business statistics (see Annex 2).

The statistics produced by the most recent research on co-operative enterprises (and companies owned by them) illustrates the importance of co-operatives in the economies of the Community. In the EU there are about 132 000 co-operative enterprises with 83.5 million members. Co-operatives in the applicant countries account for an additional 23 million members. In 1996 35 % of co-operatives were in the primary sector, 20 % in the secondary sector and 45 % in the tertiary sector<sup>3</sup>. Co-operatives employ about 2.3 million persons in the European Union (about 2.3 % of full-time equivalent salaried employment). The importance of co-operatives in employment varies from 4.58 % in Spain and 4.48 % in Finland, to 0.57 % in Greece and 0.66 % in United Kingdom.

Co-operatives are clearly an important component of the modern market economy. The overall share of economic activity accounted for by co-operatives is larger in advanced market economies than in less developed economies<sup>4</sup> and it can be assumed that they have contributed to these higher levels of development. In the USA for example over 100 million people are members of 47 000 co-operatives; more than 20 of those co-operatives have annual sales in excess of \$ 1 billion.

The market share of co-operatives in economic activity has grown throughout the 20<sup>th</sup> century in the EU Member States. In most of the Member States co-operatives hold substantial market shares in important industries, especially in primary and tertiary sectors. For example, in 1996 the market share of co-operatives in agriculture was 83 % in Netherlands, 79 % in Finland and 55 % in Italy. In forestry, co-operatives held a 60 % market share in Sweden and 31 % in Finland. In the tertiary sector co-operatives accounted for over 50 % of the market in banking in France, 35 % in Finland, 31 % in Austria and 21 % in Germany. In retail, consumer co-operatives held a market share of 35.5 % in Finland and 20 % in Sweden. In health care and pharmaceutical supply, co-operatives have a market share of 21 % in Spain and 18 % in Belgium<sup>5</sup>.

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<sup>3</sup> Figures for 1996 taken from “International Co-operative Alliance (ICA), 1998. Statistics and Information in European Co-operatives”, Geneva.

<sup>4</sup> Hansmann Henry, 1996, “The Ownership of Enterprise”, The Belknap Press of Harvard University Press. Cambridge, Massachusetts - London, England.

<sup>5</sup> ICA 1998.



As has been stated above, however, the importance of co-operatives cannot only be measured by their turnover. It has become recognised that the traditional three types of capital (natural, physical and human) determine only partially the process of economic growth because they overlook the way in which economic actors interact and organise themselves to generate growth and development<sup>6</sup>. At the macro level the “social capital” of a society includes the institutions, the relationships, the attitudes that govern interactions among people and contribute to economic and social development<sup>7</sup>. In enterprise and at local or regional levels social capital can be defined as “features of social organisation, such as trust, norms and networks that can improve the efficiency of society by facilitating co-ordinated actions”<sup>8</sup>. Social capital arises from the establishment and operation of networks, from social interaction and economic relationships; it fosters longer-term relationships and trust and is therefore a key determinant of competitiveness and sustainable economic development. Co-operatives as associations of people or/and enterprises and as equitable and democratic economic organisations are an important means of creating the necessary building blocks of social capital.

In many of the candidate countries co-operatives play an important role in the development of a sustainable market economy and democratic institutions. In central and eastern Europe they have a particular contribution to make as schools of both entrepreneurship and of civil society, although they have suffered during the transformation process through an erroneous perception that they are political (collectivist) or state structures.

## **2.3. Trends and Structural Changes in the Development of Co-operatives**

### *2.3.1. Competition, Concentration and Growth*

The current trend in many of the sectors where co-operatives are active is of concentration and competition; this is particularly the case in the retailing, food processing, banking and insurance sectors.

In recent years co-operatives have been concentrating their activities by mergers within the Member States. Mergers and strategic alliances have also been made between co-operatives in different Member States and even with candidate and other non-member states. In some cases there have been unnecessary legal obstacles to mergers between co-operatives from different Member States. For this reason the Commission has proposed a European Co-operative Statute<sup>9</sup> as a legal instrument (similar to that of the European Company Statute) for such cross-border activities. The draft Statute contains provisions for the establishment of a European Co-operative by merger or conversion in addition to creation from scratch by physical or legal persons (see section 3.2.1.).

It is a major challenge for co-operatives to react to international competition and concentration in such a way that their competitiveness and internationalisation is enhanced, whilst preserving the rights and obligations of their member/owners. Co-operatives are born,

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<sup>6</sup> Grootaert Christiaan, 1998, “Social Capital: The Missing Link?” The World Bank. Social Development family. Environmentally and Socially Sustainable Development Network. Washington DC, USA.

<sup>7</sup> Grootaert Christiaan and van Bastelaer Thierry. 2001 “Understanding and Measuring Social Capital: A Synthesis of Findings and Recommendations from the Social Capital Initiative”. The World Bank. Social Development Family. Environmentally and Socially Sustainable Development Network. Washington DC, USA.

<sup>8</sup> Putnam, R.D. “Making Democracy work: Civic traditions in modern Italy”, Princeton University Press (1993).

<sup>9</sup> O.J. C 236, 31.8.1993, pp. 1-56.

grow and die in the same way as other forms of enterprise. However co-operatives have a particular problem in that, as they grow bigger, salaried managers can sometimes lose sight of the interests of members (see section on corporate governance 2.9). In large investor-driven companies it can be assumed that certain individuals and organisations will have substantial share holdings and will take an active interest in general meetings and elections to the board. In large co-operatives where many thousands of members (shareholders) each have a very small stake in the capital, their interest in, and influence over, the board and management may not be sufficient to ensure good governance. In some sectors (particularly “customer co-operatives”) this has led to the failure of large, and well-known, co-operatives. The co-operative principle of non-distribution of reserves can mean that some co-operatives continue to exist when they have outgrown their usefulness to members.

### *2.3.2. Innovative Applications of Co-operative Enterprise*

At the other end of the co-operative life-cycle, new small co-operative enterprises are emerging in most Member States. These enterprises have been established particularly in the sectors of social and health care, local and regional development, education and housing as well as in services to businesses and knowledge-based services. They provide an important source of work and management experience for women <sup>10</sup>. These new initiatives demonstrate many of the qualities of SME start-ups, but can also demonstrate particular advantages linked to their co-operative form:

- their independence of external investment makes them a source of employment in declining industrial and urban areas and in sparsely populated regions as well as for persons under threat of exclusion;
- their membership basis can make them innovative socially, economically and technologically;
- they promote entrepreneurial spirit amongst groups who might otherwise have limited access to managerial responsibility;
- their wider objectives provide welfare and prosperity benefits to varied stakeholders;
- their participative structures can mobilise latent local and regional potential through partnerships of varied stakeholders; they contain a disproportionately high ratio of women entrepreneurs <sup>11</sup>.

In Europe, and in other advanced economies, the co-operative form of enterprise is being used in innovative ways that are worthy of note and, in some cases, encouragement or wider application. These initiatives are often re-inventions or new applications of co-operative ideas. In some cases they work well in a particular national context for localised reasons, but many of them work well because of their co-operative nature and might be more widely applicable. For example:

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<sup>10</sup> See the European Parliament, Resolution on The Role of Women in Co-operatives and Local Employment Initiatives, OJ C 158, 26.6.1989, p. 381-382

<sup>11</sup> In the above resolution the European Parliament “considers that owing to their participatory mode of operation and their adaptability, co-operative can both quantitatively and qualitatively create jobs for women in the service sector, ” PE 225.925/fin, p 7.

- In Spain and Japan education co-operatives manage many schools, enabling the members (either parents or teachers, or a combination of both) to directly influence their management.
- Utilities co-operatives are long established in the USA where, for example, rural electric co-operatives provide electricity for 26 million members at rates based on cost and operate more than half of US electricity distribution lines. Such energy co-ops are now growing in Portugal. A successful phone co-op has recently been established in the UK buying “line-time” at advantageous rates and passing these benefits on to the members in the form of low costs, or dividends based on their use of the service.
- Social co-operatives in Italy (established under Law 381 of 1991) and in central Europe provide many jobs for disabled members, or for other excluded groups including ex-prisoners and drug users.
- Co-operatives of franchisees have developed in the USA and there are some cases in Europe, such as fast food franchisees in Finland. In some cases in the USA such franchisees have taken over their franchisers. Co-operatives of suppliers to the major car producers in Japan give such small subcontractors greater bargaining power and help avoid supply ruptures.
- In the USA and Japan “campus co-ops” provide many important services to students such as low cost shops and accommodation, and counselling (one of the best known is the Harvard student co-op which is over 100 years old).
- In Quebec share-owner co-operatives have developed encouraging employees to invest in their own companies and to pool their voting power.
- E-commerce co-operatives enable small craft enterprises and independent craftsmen in France and Italy to market and sell their products on the web.
- Childcare co-operatives in Sweden enable working parents to mutually arrange childcare services under their own control. Childcare co-operatives and co-operatives providing care for the elderly provide possibilities for women to enter labour markets and provide paid labour directly.
- Retailer-owned food and hardware co-operatives in the USA make it possible for hundreds of independent storeowners to successfully compete with large chains.
- Buying groups pool the purchasing power of individuals or companies (e.g.: ACE Hardware and Dunkin Donuts in the USA) enabling small commercial operations to purchase at more competitive prices and to defend themselves from supply ruptures.
- Co-operative health maintenance organisations (HMOs) provide health care services to nearly 1.4 million American families. They are also important in the Spanish healthcare sector.
- In many artistic and cultural fields, artists and performers have created co-operatives as a means of exhibiting their work. For example in France there are over 50 theatre co-operatives including the internationally famous “Théâtre du Soleil”. The co-operative form can ensure artistic freedom.

## **2.4. Why are Co-operatives Established?**

Co-operatives are generally established in situations where one or more conditions are met:

- Homogenous needs amongst a group of people or firms which are not being met by capital companies – for example in Finland during the 90's about 700 worker co-operatives were established due to the lack of work opportunities;
- Protection against exploitative relations in the market, for example agricultural co-operatives are often a response to monopsony conditions where one buyer dominates the local or regional market;
- Need for differentiated and/or quality products or services, for example through consumer co-operatives;
- Where SMEs need to form alliances in order to have the critical mass, or provide the range of services required for public contracts.

## **2.5. Measuring the Success of a Co-operative**

Success for a co-operative may be based on different criteria than success for an investor-driven enterprise. A co-operative should not be evaluated only on the basis of indicators such as returns on investment or market share. The clearest manifestation of this is that the success of a co-operative is not reflected in its share price - co-operatives are not listed on stock markets. In fact the objectives of co-operatives are extremely diverse and therefore their success in achieving them is impossible to measure by any common indicators. The particular characteristics that must be taken into account when evaluating the level of success of a co-operative include:

- Orientation to provide benefits to members and satisfy their needs
- Democratic goal setting and decision-making methods
- Special rules for dealing with capital and profit
- General interest objectives (in some cases)

Many non-co-operative enterprises have discovered that some of the basic co-operative ideas can give them competitive advantages. Networking, strategic alliances and franchising are all forms of co-operation. In a context of increasing competition many companies are also seeking to increase customer loyalty and a “sense of belonging” through membership bonus schemes, or to differentiate themselves from competitors through claims to be socially or ethically responsible. The current popularity and success of these ideas is a proof of the continued validity of co-operative concepts.

## **2.6. Main differences from Investor-Driven Firms**

Co-operatives have certain differences in their structures to other types of enterprises. These differences can be briefly listed as follows:

- Decision making is based on one member - one vote (or on other restricted voting systems, for example based on the transactions made with the co-operative)

- Members/owners equity contribution is equitable
- Return of profits is restricted and is normally proportional to use of the services of the co-operative
- Accumulation of asset value is not reflected in the value of shares
- Shares cannot be exchanged on stock markets
- Freedom of entrance and exit to the company
- As a result of the latter two, nominal capital is variable, not fixed
- Principle of non-distribution (or limited distribution) of reserves on winding up.

These specific characteristics of co-operative enterprises result in certain advantages and disadvantages in relation to investor owned companies.

## **2.7. Main Advantages of the Co-operative Enterprise Form**

Whilst uniting people as consumers, producers, owner employees or as combination of these to the decision making process as owners to the enterprise co-operatives may have some advantages to other types of companies.

- They can use the interest of a large stakeholder group to create innovations in their business;
- They encourage “Efficient Consumer Response”. The users are members and therefore the co-operative should have direct information of customer needs and of changes in their conduct, habits and expectations;
- Increased motivation of employees as owners;
- Member interest gives a greater margin for temporary adaptation to economic or other difficulties;
- Decreased nominal capital does not lead to insolvency;
- Democratic decision making may lead to more sustainable decisions;
- Limited access to external capital may lead to a stronger own capital basis;
- Non distribution of reserves may lead to stronger capital basis;
- In general sustainable enterprise development is possible in the face of external pressures

## **2.8. Disadvantages and Dilemmas of Co-operative Enterprises**

The main disadvantages of the co-operative formula include:

- Membership orientation can cause difficulties in diversifying products and services to take advantage of new opportunities where such opportunities may have no relation to the

interests of the members. The allocation of capital to its most efficient usage is therefore less effective through co-operatives than via stock markets.

- Limited access to external equity capital through available capital markets can lead to dependence on loan capital where members own capital is insufficient. Restricted voting rights (normally one person - one vote) can be a disadvantage in attracting risk capital without commensurate voting power;
- Democratic governance can lead to a slow decision making process;
- A large membership base can result in failure to keep abreast of members' needs and interests;
- In cases where members invest modestly this can lead to modest member interest and activity to develop the enterprise;
- The easy exit and entry to co-operatives can potentially cause problems to the stability of the enterprise due to exit of active members (for example on retirement of a farmer in an agricultural co-operative) and other development factors;
- Lack of understanding of the particular nature of co-operative management in traditional enterprise support and advice services;
- Access to public procurement, whilst public authorities sometimes consider co-operatives as non-profit organisations and therefore ineligible as bidders.

## **2.9. Corporate Governance**

### *2.9.1. Governance in Co-operative Enterprises*

Corporate governance mechanisms define how owners of an enterprise supervise the management of that enterprise to obtain the maximum benefit. They specify the rights and responsibilities of the board, managers, shareholders and other stakeholders. However, for a co-operative this question is rather more complicated as the whole meaning of ownership is different (it is more than an investment), as are the expected benefits of ownership. Corporate governance structures in co-operatives must balance a wider variety of stakeholder interests and measure the achievement of wider objectives than in investor-driven enterprises.

The co-operative difference in respect of corporate governance can best be explained by looking at the financial structure of a co-operative:

- Co-operative shares are not normally transferable and therefore there is no market for them, they therefore lack the kind of control that comes from daily monitoring of public listings (for example by analysts, the media and institutional investors);
- As they are not tradable, the value of shares in a co-operative does not reflect expected future earnings - they are normally refundable at par value. The added value of the enterprise cannot therefore be realised by selling the shares;
- Members of a co-operative are less likely to "exit" by claiming back their shares when they are dissatisfied. They cannot merely "vote with their feet" by selling their shares on the market. Membership is usually based on use of the services of the co-operative and active

participation in its activities. An alternative source of these services might not be immediately available;

- The nominal share capital of a co-operative is variable (unlike that of joint stock companies) and will often depend largely on retention of surpluses. In order to increase their capital base, co-operatives can normally only ask their members to increase their capital input, or increase the number of members.
- The one member – one vote principle makes it impossible for a single owner to dominate in decision making. It guarantees all members an equal voice in such decisions, but may be a dissuasive influence in attracting further capital, as ownership does not bring commensurate voting power;
- Surplus (profit) distribution is normally by way of a dividend based on transactions undertaken with the co-operative by members;
- The reserves of a co-operative are (normally) non-distributable, they cannot be distributed to members on the winding up of the society.

Effective corporate governance is essential for the development of co-operatives, particularly as they become larger and adopt multi-tier (e.g.: management and supervisory) board structures. Several examples exist in Member States of major co-operative failures where management has ceased to act in the best interests of the members.

Many co-operatives have found innovative means of overcoming the restrictions inherent in the co-operative form whilst retaining their co-operative legal status, for example by establishing capital-based, wholly owned subsidiaries. However these structures make effective corporate governance even more difficult as they can further distance management from membership.

The lack of stock market indices as a means of assessing the performance of a co-operative means that members must either be very active in their monitoring and participation in general meetings, or find alternative signals.

Co-operative organisations have become very aware of the importance of effective member control and have undertaken some interesting work<sup>12</sup>. Whilst this issue remains one that each co-operative must address individually, there is scope for useful exchanges of ideas and practice between Member States and these should be encouraged. There is also scope for useful discussion between national administrations with regard to good regulation, particularly in the protection of minority interests in co-operatives and the extent of trade with non-members.

#### *2.9.2. Corporate Governance and Corporate Social Responsibility*

The decisions of companies affect not only owners, but also a wider range of stakeholders, including employees, customers, suppliers and the local community. This understanding has

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<sup>12</sup> See for example “Corporate Governance and Management Control in Co-operatives”, Pellervo Confederation of Finnish Co-operatives, November 2000, translated into English with the financial assistance of the European Commission, DG Agriculture. See also the recommendations of the Report of the UK Co-operative Commission (2001) “The Co-operative Advantage” at <http://www.co-operativecommission.org.uk/index2.html>.

oriented the current debates in Europe regarding the role of enterprises in sustainable development and corporate social responsibility. The recent Commission Green Paper on Corporate Social Responsibility recognised that co-operatives can “structurally integrate other stakeholder interests and take up spontaneous social and civil responsibilities”<sup>13</sup>.

This structural integration of stakeholder interests is directly related to the particularities of co-operative ownership structures (listed above) which ensure that short term returns on capital invested cannot be the sole, or dominant, factor in decision making. This means that socially responsible actions by a co-operative are not necessarily only for marketing purposes, indeed it has often been suggested that co-operatives have generally been rather bad at marketing their social responsibility. However, where co-operatives have wider social or economic objectives by merit of their ownership structures, these will only be achieved where effective corporate governance structures act in the interests of all stakeholders.

It is also important not to over-exaggerate these wider benefits of co-operative enterprise. Many co-operatives act purely in the financial interests of a limited stakeholder group.

Where desire to please the stock markets can lead to “short-termism” (and perhaps short-sightedness), the involvement of other stakeholders can lead to greater concern for the medium and longer term. In sectors where a longer-term view is important to the quality of goods or services the co-operative form could be beneficially applied. This is true of many areas which were, until recently, predominantly the preserve of the public sector, such as education, health and care services. It is in these sectors that co-operatives now appear to be growing most rapidly across the EU<sup>14</sup>. Consideration should be given to bringing together some of these experiences in various Member States in order to assess the potential for applying successful models more widely.

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<sup>13</sup> Green Paper “Promoting a European Framework for Corporate Social Responsibility” (p. 7), COM(2001) 366 final, 18.7.2001.

<sup>14</sup> See the Synthesis Report of the Commission funded project “Third System Employment and Local Development” at [http://europa.eu.int/comm/employment\\_social/empl&esf/3syst/vol2\\_en.pdf](http://europa.eu.int/comm/employment_social/empl&esf/3syst/vol2_en.pdf).



### 3. CO-OPERATIVE LEGISLATION IN THE EUROPEAN UNION

Co-operatives are explicitly recognised in European Union as one type of ‘companies or firms’ under the Treaty of Rome (Article 48).

Within all Member States co-operatives have a legal framework within which they can operate (although there is not always a specific co-operative law) and which protects the interests of members and third parties. However it is more difficult to ensure that co-operatives are treated equally and fairly *vis-à-vis* other forms of enterprise. In certain circumstances, such as those outlined in section 2.8, special concessions to co-operatives may be justified to ensure that they are not put at a disadvantage<sup>15</sup>.

Co-operatives have the right to expect equal and fair treatment in the market place. In order to address their potential disadvantages two approaches are possible:

- A more flexible regulatory régime can be applied. For example allowing access to traditional equity capital, or voting rights related to share-ownership
- A stricter regulatory environment can be applied with particular advantages or derogations being justified in return for respecting these rules

The choice of approach differs significantly between Member States. Of course in all cases the approach is nuanced and in reality a combination of both exists. The dilemmas created by both approaches are evident. The first approach dilutes the co-operative identity and may ultimately call into question the need for a different legal form. The second approach can lead to accusations of unfair advantages, or worse still, use of the co-operative form purely as a means of avoiding tax. Any such advantages or derogations must be a measured response to the restrictions implicit in the co-operative form. In those countries where no specific co-operative legal form exists the possibilities of the second approach are limited.

#### 3.1. Recent Developments of Co-operative Legislation

The main purpose of co-operative legislation is to enable and regulate the establishment and economic activity of co-operatives. Such legislation has generally respected, either closely or loosely, the co-operative principles established by the International Co-operative Alliance<sup>16</sup>.

In trying to reduce the restrictions imposed by the co-operative form, whether by regulation or voluntary rules, significant innovations have been introduced to the rules and laws governing co-operatives in many of the Member States during the last two decades. These reforms have mainly been designed to enable co-operatives to reach financial markets and to loosen restrictions and requirements for the formation of co-operatives. It can be argued that some of these recent developments run contrary to the co-operative principles, however they have

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<sup>15</sup> “The role of Member States in relation to co-operatives should be to provide a supportive policy and legal framework consistent with the nature and function of co-operatives and which is guided by the co-operative values and principles” The proposition of the Committee on the Promotion of Co-operatives on the 89<sup>th</sup> ILO International Labour Conference (5-21 June 2001). Report by the national co-operative organisations of the Committee, September 2001, p. 66.

<sup>16</sup> Elaborated in 1966 and updated in the ICA “Statement of Co-operative Identity” in 1995. These principles have been subject to considerable recent discussion by the International Labour Organisation <http://www.oit.org/public/english/standards/relm/ilc/ilc89/pdf/rep-v-2.pdf>.

been considered desirable in order to take into account the needs of growing co-operatives in a modern economy.

Such reforms have included:

- Reducing the minimum number of persons required to create a co-operative;
- The possibility of giving some members more than one vote;
- Broadening the limits on activities and on trading with non-members;
- The possibility of issuing specific bonds, representing risk or debt capital;
- Allowing third parties to participate in share capital;
- Permitting the transformation of co-operatives into joint-stock companies.

The Table in Annex 1 gives an overview of the legislation governing co-operatives in the Member States particularly identifying where such provisions exist.

It can be argued that the co-operative form is voluntary and therefore if it becomes too restrictive co-operatives should simply consider changing to a legal form which is better suited to their needs. In any case a co-operative converting to a non-co-operative legal form could maintain many of its characteristics merely by adopting appropriate internal rules (articles of association or statutes). Many co-operatives have been highly innovative in finding their own solutions, within the regulatory limits imposed on them, by, for example, out-sourcing some of their activities to wholly or partly-owned capital-based subsidiaries. Co-operatives have also created adapted financial instruments, such as joint investment funds.

However, where such relaxations of regulations governing co-operatives are limited by thresholds and ceilings, they can enable co-operatives to become more competitive without necessarily compromising their co-operative character. For example outside investment in the share capital of a co-operative might be permitted without it becoming “investor-driven” if such investors cannot dominate the decision making process of the co-operative to the detriment of the members’ interests.

The European Charter for Small Enterprises<sup>17</sup> calls on Member States and the Commission to “achieve a regulatory, administrative and fiscal framework conducive to entrepreneurial activity”. This implies that company legislation should be enabling rather than restrictive. However in the case of co-operatives the degree of flexibility must never be allowed to threaten their nature as member-driven enterprises.

Co-operative legislation in Member States can be divided in three major approaches:

- (1) countries where there is one general co-operative law,
- (2) countries where co-operative legislation is divided according to the sector and social purpose of the co-operative, and

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<sup>17</sup> European Charter for Small Enterprises, adopted by the General Affairs Council, 13 June 2000 and welcomed by Feira European Council, 19/20 June 2000.

- (3) countries where there is no co-operative law and where the co-operative nature of a company is solely derived from its articles of association (statutes or rules).

In the Member States with one general law on co-operatives there is wide freedom to establish co-operatives and for those co-operatives to undertake whatever actions they believe to be in their members' interests. However, in these Member States there tend to be no specific benefits or allowances made to co-operatives.

In those Member States where co-operative legislation is more divided by sector and purpose, there are frequently special benefits or allowances made according to the social purpose of the co-operative (see Annex 1). It has been argued that this type of legislation hampers economic development of that country and that it is not in long-term interest of the co-operatives and their members<sup>18</sup>.

In ten of the fifteen Member States co-operatives (or at least some types of co-operatives) have special advantages in legislation, mostly in taxation<sup>19</sup>. In four Member States agricultural co-operatives have particular benefits. The purpose of these benefits is to foster the capital formation of co-operative enterprises and is intended to be a measured counterbalance to the restrictions posed by the adoption of the co-operative form.

Concerning the allocation of surplus (profits) of the financial year, the standard co-operative practice is for the remuneration of members on the basis of their transactions with the co-operative (after the allocation of part of net income to reserves). All Member States' legislation allows for this.

According to the co-operative principles, and the character of co-operatives as associations of people rather than capital, reserves should not be distributed to members on dissolution. In many cases the principle of "disinterested distribution" is adopted, whereby net reserves and assets should be distributed on dissolution to another organisation having similar aims. The countries with specific regulations governing the creation of reserves (and distribution of reserves on winding up) are generally those where co-operatives have a status that is most different from that of other economic entities.

Two types of legislation can be distinguished, where the creation of reserves is mandatory. (i) In France, Italy, Spain, Portugal, Finland and Sweden, the principle is set forth in legal and regulatory provisions and is therefore applied rather strictly. (ii) Conversely, in Belgium, Germany, the Netherlands and Denmark, the law establishes whether reserves may be distributed or not, but leaves the manner in which such reserves are distributed in the event of dissolution or withdrawal of a partner either to the articles of association, the members or their representatives.

The "one person-one vote" rule is common practice to all countries concerned, at least with regard to first-degree co-operatives. However recent legislative developments in certain countries allow a more flexible approach. For example, regulations may provide that members

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<sup>18</sup> van Bekkum, Onno-Frank and van Dijk, Gert (eds). *Agricultural Co-operatives in the European Union. Trends and issues on the Eve of the 21<sup>st</sup> Century*. Publication requested by the General Committee for Agricultural Co-operation in the European Union (COGECA), and co-sponsored by the Directorate-General XXIII of the European Commission. Van Gorcum. Assen. p. 187 See also Henry Hagen, 2001, "Guidelines for Co-operatives Legislation" *Review of International Co-operation*. Volume 94 N° 2/2001. New Delhi, p. 55.

<sup>19</sup> Higher council for co-operation 2000 (Inter-ministerial task force for social innovation and for the social economy, France): *Co-operative movements in the European Union*. DIES/30 January 2001.

may hold multiple votes, or, conversely, that voting rights may be in relation to the amount contributed. In the interests of allowing such flexibility without permitting a situation where the interests of members as investors could outweigh the original objectives of the co-operative, limits have normally been placed on the maximum number of votes that one person or one category of member may hold.

In eight countries, where laws on co-operatives have been adopted recently, (France, Italy, Spain, Belgium, Portugal, Denmark, Finland, Sweden), third parties who are not members of a co-operative have been authorised to invest in it. However, there is little evidence of significant use of this tool by co-operatives.

The variable capital rule, allowing for the application of the co-operative “open door” principle<sup>20</sup>, is included in the legislation of most countries (with the exception of Germany). The directive on the law of public limited companies in the European Union, which came into force in 1981, expressly authorises co-operative companies to adopt articles of association providing for a variable capital.

When the exclusivity principle (under which co-operatives may have business relations only with their members) is enshrined in the legislation, it is usually couched in terms allowing for some flexibility. For example, many countries authorise transactions with third parties that are not members of the co-operative provided that these transactions remain ancillary in nature and do not jeopardise members’ interests. In several countries trade with non-members is tolerated, even if it runs contrary to the definition of a co-operative under national law. Certain Member States do not allow non-user (investor) members to benefit from surpluses resulting from trade with non-members.

More than half of the Member States make it possible for co-operatives to abandon their co-operative status by converting into a commercial company without losing their status as a body corporate.

In the agricultural sector, co-operatives are generally submitted to the “territoriality principle”, which is enshrined in most national regulations. However this principle is normally established in the articles of association in countries where it is not mandatory.

In some Member States there are restrictions regarding the economic sectors in which co-operatives can function – in some cases these may run contrary to European rules on the freedom of establishment. For example there are cases of co-operatives being excluded from the production and distribution of electric power and the distribution of petrol. These are sectors where co-operative models have improved the efficiency of markets and provided protection from monopoly pricing in other countries, and thereby secured fair prices for consumers. The justification for restrictions on the activity of co-operatives must therefore be analysed.

The table of Member States co-operative laws in annex 1 illustrates the significant differences between the laws to which co-operatives are subject in different Member States and therefore suggests that there is a far from level playing field between co-operatives across the Union.

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<sup>20</sup> Freedom to join and withdraw, with a possibility of expelling members, and with a corresponding decrease or increase in capital.

### 3.2. The European Co-operative Statute <sup>21</sup>

The objective of the Regulation for a European Co-operative Society (SCE) is to provide co-operatives with adequate legal instruments to facilitate their cross-border and trans-national activities. Cross-border co-operation between co-operatives is currently hampered in the Community by legal and administrative difficulties, which are not acceptable in a market without frontiers.

Such an instrument will ensure equal terms of competition with the European Company (SE), since the Statute for a SE, which is a capital-based undertaking, is not an instrument that is suited to the specific features of co-operatives. An SCE shall have as its principal object the satisfaction of its members' needs and/or the development of their economic and social activities, and not the remuneration of a capital investment.

#### 3.2.1. *The Potential Use of the Statute*

Some have questioned the practical need for a European Co-operative Statute, suggesting that few co-operatives would use it, and that those co-operatives that have activities in more than one Member State manage adequately under existing national laws. This may have been the case ten years ago, but there is increasing evidence of demand from co-operative enterprises for such an instrument. In the last five years there has been a significant increase in examples of cross-border co-operative activity including mergers and groupings of some major entities. Such activities would be facilitated by a suitable legal instrument enabling a single set of rules, structure and registration.

Aside from these existing examples of cross border activity, the Statute might be expected to mobilise the latent possibilities of co-operative activity in border areas, and the use of the instrument by persons or companies that might not previously have thought of using the co-operative legal form.

The SCE Statute has certain characteristics that might make it particularly attractive as an alternative to the existing possibilities:

- It is well suited to groupings of individuals (for example professionals) or legal entities, but provides the possibility of limited liability (which is not possible under the European Economic Interest Grouping form);
- An SCE can be created from scratch by physical persons or a mixture of physical and legal persons (which is not possible for a European Company). It therefore opens up possibilities for enterprise creation by individuals from different Member States that have, until now, not existed in the Single Market.

For these reasons the Commission should be particularly concerned about promoting the use of the European Co-operative Statute as a means of encouraging entrepreneurship and market efficiency throughout the Single Market. The most effective way of ensuring its widespread use would be to encourage the Council working groups to significantly simplify the draft text through:

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<sup>21</sup> Amended proposals O.J. C 236, 31.8.1993, pp.1-56. See also Annex 3 for a summary description of the Statute.

- Reduction of the references to national laws of the Member State in which the SCE is registered;
- Simplification of the provisions concerning employee involvement in an SCE, particularly where created from scratch (*ab initio*).

Upon the adoption of the Statute it would be beneficial to publish an explanatory guide in the official languages for distribution via the Euro Info Centre network, whose role is to assist SMEs in accessing information regarding Community programmes and initiatives.

### 3.2.2. *The Potential Effect of the Statute on Member State Legislation*

The variety of national provisions for co-operatives has made achievement of a common position on the current draft text for the European Co-operative Statute a complicated process. Member States have been eager not to undermine their national laws or to create loopholes. This has resulted in multiple references back to the laws of the Member State in which the European Co-operative Society (SCE) is registered.

References to Member States' laws will result in differing regulatory contexts for SCE's registered in different Member States.

Such references will reduce the transparency and efficiency of such co-operatives. Members, who will by definition originate from more than one Member State, will have to make themselves aware of the legal provisions of other Member States which may not be available in their own language. This will considerably reduce the attractiveness of the SCE form.

References to national laws will also increase the interest of an SCE in trying to seek the most conducive national context in which to register ("forum shopping"). For example, SCE's would only be able to make use of such provisions as non-user investor members and priority shares where they are registered in a Member State that permits these under national co-operative law.

Such forum shopping may have the longer-term "spill-over" effect of approximating certain provisions of co-operative regulation in Member States. National governments will wish to attract SCE's to register in their territory, or, conversely to dissuade co-operatives within their territory from converting to the SCE form in order to register in another Member State with a more permissive or flexible regime. Approximation of this nature would naturally tend towards a "lower common denominator" (more permissive regime) as Member States in effect competed to provide the most conducive "forum".

In order to render the statute for a European Co-operative Society an attractive and effective tool, to reduce forum shopping, and to prevent the progressive erosion of national co-operative legislation, it would be preferable to fix common rules for European Co-operative Societies. Further efforts will therefore be required to reduce the number of references to national laws in the draft text.

The draft statute includes several provisions inspired by recent developments in national co-operative legislation, such as non-user (investor) members and priority shares. These are intended to reinforce the competitiveness of co-operatives and ensure that they are not placed at a disadvantage compared to European Companies. Nevertheless, there remain Member States where such provisions do not exist under national legislation and these Member States have expressed concern that they are contrary to the principles of co-operative enterprise.

The Commission has favoured an approach whereby departures from a strict interpretation of the co-operative principles are restricted by clear ceilings designed to ensure the continued primacy of the individual over capital. An example of this would be to permit non-user investor members to have voting rights, but with a ceiling of 25 % of votes cast in any meeting. This approach has the dual benefits of corresponding most closely to the needs of co-operative business in Europe, whilst protecting their character as associations of persons rather than capital. It also provides the best possibility of achieving a common position between those Member States that have successfully integrated such innovations into their national laws, and those that remain concerned about the integrity of the co-operative principles.

It would be particularly useful to bring together public officials responsible for the regulation of co-operatives in the Member States for a structured debate on the future development of co-operative law in Europe, and in respect of the transposition of the European Co-operative Statute into Member State laws. Analysis and comparison of the variety of approaches to the taxation and labour regulation in relation to co-operatives would be beneficial at European level. Such a process would enable Member States and the Commission to develop better regulation on the basis of good practices. Special attention should be given to regulations that restrict the freedom of operation of co-operatives, or that confer special or beneficial treatment.

The Commission has recently created a high level group of experts to support it in preparing a new proposal on take-over bids. The remit of this group includes making recommendations with a view to creating a modern regulatory European company law framework. More specifically it will consider the creation and functioning of companies and groups of companies, co-operatives and mutual enterprises, including corporate governance. DG Enterprise should be associated with this work in aspects concerning enterprise groupings and co-operative and mutual companies.

## **4. THE CONTRIBUTION OF CO-OPERATIVES TO COMMUNITY OBJECTIVES**

### **4.1. The Added Value and Contributions of Co-operative Enterprises**

The co-operative formula may be particularly suited as a vehicle for achieving diverse community objectives. It may:

- Correct market failures and enable the efficient organisation of markets by enabling those who are in a weaker market position to combine their purchasing or selling power;
- Unite small enterprising activities into bigger marketable and more efficient units whilst allowing to retain their autonomy;
- Give market power to lay people or small enterprises where homogenous products or services are needed;
- Enable those who have little capital to influence economic decision making;
- Enable citizens to affect or determine services they need;
- Take a longer-term view being based on maximising stakeholder benefits rather than shareholder value. Members are less likely to “vote with their feet” than shareholders who seek maximum returns in global financial markets. For similar reasons a co-operative will be less likely to withdraw from a particular region or sector because its capital could be more profitably employed elsewhere. Co-operatives can therefore provide a cushion from structural change;
- Provide a school of management, particularly to people who might not otherwise have access to positions of responsibility;
- Integrate large sections of the population to economic activity;
- Benefit local markets and service local needs with close contact to citizens. Raising economic activity in the regions and sectors where co-operatives are active;
- Provide stability. Because the purpose of a co-operative is to benefit its members, rather than to provide a return on capital, they can often survive and succeed in circumstances where investor-owned businesses would be deemed unviable;
- Generate trust and create and maintain social capital due to democratic governance and economic participation.

### **4.2. Specific Areas of Co-operative Contribution**

#### **4.2.1. *Employment & Social Policy***

The ability of co-operatives to create high quality and sustainable jobs is increasingly recognised. Co-operatives and the wider social economy are now explicitly included in the mainstream European Employment Strategy. For example the Guidelines for the National



Action Plans (NAP) for employment have, since 1998 called on Member States to report on social economy initiatives under the Entrepreneurship pillar<sup>22</sup>. The 2001 Guidelines explicitly call on the Member States to “exploit fully the possibilities offered by job creation at local level and in the social economy” (Guideline 11).

This reporting procedure has enabled DG Enterprise to monitor the application in Member States of Guidelines relevant to co-operatives in the NAPs. To date the reports of the Member States have indicated very differing levels of activity in this area with Spain, Ireland, France and Italy being the most active. In some Member States there is no tradition of social economy (sometimes leading to a complete misunderstanding of the concept). Future Commission guidelines should therefore make clear what the social economy is by referring to its constituent elements (co-operatives, mutuals, associations and foundations) which exist in all Member States.

In several Member States many successful (and relatively inexpensive) initiatives to improve employment levels, particularly amongst disadvantaged groups, have used co-operative and social economy ideas. This has been well illustrated by the NAPs and by projects supported by the Commission’s “Third System and Employment” Programme<sup>23</sup>. Labour market institutions should be further encouraged to develop co-operative solutions to employment problems through the further dissemination of good practices.

However, now it is important that these lessons be integrated into the design of projects funded by the mainstream European Social Fund. Within the framework of the European Social Fund no statistics are available on the level of participation of co-operative enterprises and organisations in supported projects.

Social enterprises have emerged in all Member States, largely as an answer to the increasing pressures on the structures of welfare state. They often adopt the legal form of co-operatives or associations with economic activities<sup>24</sup>. In some Member States there are specific laws regulating Social Enterprises. These have developed particularly in those countries where there are restrictions on associations carrying out commercial activities. In Italy the Law on Social Co-operatives, in Belgium the Société à but social (or Société coopérative à but social), in Portugal and Greece Social Co-operatives with Limited Liability, in France the Société Coopérative d’Intérêt Collectif (SCIC). These new legal frameworks aim to encourage the entrepreneurial and commercial provision of social and welfare services and to increase the participation of women in labour markets<sup>25</sup>, whilst involving various stakeholders (workers, voluntary workers, target groups, and municipalities) in the production process. Their growth and performance has been encouraging.

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<sup>22</sup> This is in line with the recommendations of the Communication from the Commission to the Council. Business in the “Economie Sociale” Sector. Europe’s frontier-free market. SEC(1989) 2187 final, 18.12.1989.

<sup>23</sup> see [http://www.europa/comm/employment\\_social/empl/esf/3syst/index\\_en.htm](http://www.europa/comm/employment_social/empl/esf/3syst/index_en.htm). The Acting Locally for Employment Programme and the EQUAL Programme are perhaps the most suitable existing programmes for supporting further initiatives of this type.

<sup>24</sup> EMES report, 2001, Research funded in the framework Targeted Socio-Economic Research of the European Commission (DG Research - 1996-1999), <http://www.emes.net/uk/presentation.htm> and Borzaga, C. & Santuari, A. (eds.), 1998, Social Enterprises and New Employment in Europe, in co-operation with European Commission DG V, CGM Consorzio nazionale della cooperazione sociale.

<sup>25</sup> European parliament, Report on the role of co-operatives in the growth of women employment, Commission{FEMM}Committee on Women’s Rights, Rapporteur: Mrs Maria Paola Colombo Svevo, PE 225.925/fin., 8.7.1998, p. 7.

Many such social co-operatives are active in labour-intensive social services sectors and as such should benefit from the Directive of 22 October 1999 on reduced VAT for labour-intensive services.

Notwithstanding the potential contribution of co-operatives to achieving social and employment objectives, it is important that they should not be perceived merely as a (state supported) labour market tool. Co-operatives are a form of enterprise that is capable of competing on equal terms with other companies. It should be made very clear that where social co-operatives receive fiscal or other advantages, these are on account of their social objectives and not because they are co-operatives per se<sup>26</sup>.

To encourage better regulations concerning social enterprises benchmarking exercises would be beneficial as a means of exchanging best practice between Member States.

#### 4.2.2. *Enlargement*

Most of the Accession Countries (AC's) have long co-operative traditions. However, although co-operative enterprises are clearly a market economy phenomenon, they have experienced problems in those countries that were subject to socialist planning, through an erroneous identification with state collectives and the planning system.

There are two main issues related to co-operatives in the enlargement process:

- co-operative enterprises will need to adjust to the competitive context of the Single Market
- public authorities in Candidate Countries may need assistance in developing appropriate regulation for co-operatives, and in the adoption of the potential *acquis communautaire* in respect of the European Co-operative Statute

With regard to the former, the most effective means of preparing co-operatives in candidate countries to modernise their management, to enhance the quality of their financial structures, and to develop intermediary structures, is to encourage their contacts with similar enterprises that exist and thrive within the Single Market<sup>27</sup>.

With regard to the latter, public officials from Candidate Countries should be invited to participate in the ad hoc group of public officials whose creation is proposed in order to follow-up the recommendations of this Document. Officials from Candidate Countries should particularly be involved in preparations for the practical implementation of the European Co-operative Statute after its adoption.

The potential of new co-operative initiatives to assist the balanced development of the economies and societies of the Candidate Countries must also be emphasised. Firstly, co-operatives should be important vehicles in modernising the economies of the candidate

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<sup>26</sup> The Committee on the Promotion of Co-operatives of the 89<sup>th</sup> ILO Conference, June 2001, concluded "Member States should treat co-operatives on terms not less favourable than those accorded to other forms of enterprise and social organisation. Support measures should be introduced where appropriate for the activities of co-operatives that meet specific social and public outcomes such as employment promotion or the development of activities benefiting disadvantaged groups or regions. Such measures could include among others, and in so far as possible, tax benefits, loans, grants, access to public works programmes and special procurement provisions". ILO report 2001, p. 67.

<sup>27</sup> This is the method currently being employed by the Commission co-financed SCOPE project (Phare Business Support Programme) for workers co-operatives in the candidate countries.

countries, bringing the benefits of the market to a wider range of citizens. Secondly, co-operatives would also be an effective and appropriate way of providing for the wide variety of unmet needs that have been generated in the period of transition. Thirdly, co-operatives could provide “schools of entrepreneurship” for many citizens who would not otherwise have the opportunity to gain management experience.

The Multiannual Programme for Enterprise and Entrepreneurship (2001-2005) is open to all candidate countries and the Commission can finance actions in those countries where the national governments include such actions amongst their priorities in their co-operation agreements with the Commission. The co-operative movements in the AC’s should therefore be encouraged to make their own ministries aware of how the multi-annual programme might assist them. This will be particularly relevant in relation to the any future benchmarking activities that are proposed for co-operative regulation and development.

#### *4.2.3. Regional Development*

Co-operatives are relevant to achieving all three objectives of the European Regional Development Fund (ERDF) and the objectives of the Community Initiatives<sup>28</sup>, however they tend to be invisible in these programmes and therefore it is impossible to gain an overview of their involvement. An attempt might be made to illustrate the positive impact of including co-operative enterprises in regional projects through the identification of good practices. These might form the basis for making explicit references to the inclusion of co-operatives in regional partnerships in Commission guidelines.

Co-operative solutions may also provide an effective means for organising services of general interest in regions where public supply is not available or where for-profit supply may endanger equitable possibilities to use of such services. The Commission has expressed its commitment to maintaining the function of such services intact<sup>29</sup>.

Multi-stakeholder co-operatives have also proved a viable and effective means of organising and providing other public services, for example leisure services, where an enterprise organisation, which combines the presence and influence of many stakeholders including local authorities, can encourage the equitable use of the services.

#### *4.2.4. Public Procurement*

Co-operatives are “companies” under the definition provided by Article 48 of the Treaty of Rome. They should therefore not be excluded from public tendering procedures on account of their legal form. Indeed the co-operative form can be a useful way for smaller companies to gain the necessary critical mass or range of services to bid for public contracts. Access of SMEs to public procurement is a priority of the multi annual programme of DG Enterprise.

To compliment the studies currently under preparation concerning the improvement of access of small businesses to public procurement<sup>30</sup>, further information might be sought as to the extent of exclusion of co-operative enterprises from public contracts. Proper consideration

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<sup>28</sup> The European Parliament has referred to this for example in its resolutions. OJ C 128, 16.5.1983, p. 52, OJ C 246, 9.7.1987 p. 95, OJ C 158, 26.5.1989, p. 381, and OJ C 61, 28.2.1994, p. 233.

<sup>29</sup> Communication from the Commission – “Services of general interest in Europe”, COM(2000) 580 final.

<sup>30</sup> BEST project under the 2001 DG Enterprise Work Programme.

could then be given to the promotion of such participation in public markets through training, information and service support through the identification of best practices in the field.

#### 4.2.5. *Employee Ownership and the Organisation of Work*

The 1994 Recommendation of the Commission on the transfer of small and medium-sized enterprises drew attention to the need for Member States to “promote the transfer of the enterprise to employees” through reduced or deferred taxation. It stated that “These measures should be applied equally to an enterprise or a workers’ co-operative set up by the employees”<sup>31</sup>. The follow-up Communication<sup>32</sup> of the Commission in 1998 concluded that little progress had been made in this area. Nevertheless there are an increasing number of transfers to employees in several Member States. Although many such transfers are frequently of failing businesses, their survival rates have been encouraging. Even where they have failed, they have often allowed important additional time for a region to adapt to the labour market consequences of an abrupt and often unexpected closure. The regulatory environment required to encourage such employee buy-outs merits further analysis. Examples of effective regulation exist in certain Member States (e.g.: Law n° 49 of 27 February 1985 - “Marcora’s law” - in Italy).

The Commission has already published a Commission Staff Working Paper<sup>33</sup> on Financial participation of employees in the European Union putting forward evidence that financial participation schemes are in all cases associated with higher productivity levels. Furthermore there is compelling evidence<sup>34</sup> that increased productivity and competitiveness derives particularly from real participation of employees in decision making within an enterprise, as opposed to mere financial participation.

One method of increasing the importance and the decision-making power of the employee-owned shares is the creation of co-operatives of employee shareholders to hold jointly the shares. In Quebec active employee participation is encouraged through the establishment of “coopératives des travailleurs actionnaires”. These co-operatives are particularly present in the manufacturing, IT and media sectors.

#### 4.2.6. *Development Aid*

Very little information is available on the long-term success of co-operative projects in third countries, however co-operative structures can be an effective means for development. Some evidence shows that co-operative development projects seldom gain short-term visible results,

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<sup>31</sup> 94/1069/EC Commission Recommendation of 7 December 1994 on the transfer of small and medium sized enterprises, Article 7b. OJ L 385, 31.12.1994, pp. 14–17.

<sup>32</sup> OJ C 93, 28.3.1998, p. 2.

<sup>33</sup> SEC(2001) 1308, 26.7.2001.

<sup>34</sup> See: “Shared Modes of Compensation and Firm Performance: UK Evidence” by Martin J. Conyon and Richard B. Freeman of Harvard and LSE.

but that projects with a “bottom-up” approach (such as the creation of grass-roots co-operatives) have tended to be more successful in the long-term. Such projects are frequently based on the training of co-operative advisors <sup>35</sup>. They reduce the possibility of “leakage” of development funds by going directly to citizens rather than via government agencies.

The Commission might consider bringing together practitioners and officials responsible for development projects to consider the lessons that can be learned from previous co-operative projects. The launch of a specific programme within DG Development might be appropriate.

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<sup>35</sup> Münkner Hans-H. Co-operatives and State beyond Europe. The Making of International Co-operative Promoters the Case of Germany. Marburg 2000, p. 14-15.

## **5. ENSURING AN ACCURATE UNDERSTANDING OF THE SECTOR**

### **5.1. Structure of Public Administrations**

The very diversity of co-operative enterprises, and their inherent double nature as both enterprises and associations of members, has led to the adoption of diverse ways by Member State authorities to deal with their regulation and development in a co-ordinated way. This is reflected in the variety of ministries that have responsibility for the co-operative sector in different Member States. In recent years several European governments have made efforts to increase the coherence of their administrative structures in this respect. Here are now six Member States that have a minister with direct responsibility for the social economy within his/her portfolio. In some Member States inter-ministerial units have been established to co-ordinate the relevant ministries.

Nevertheless, co-operative organisations complain about a frequent lack of knowledge, or, more seriously, a misunderstanding of the co-operative form within the public authorities with which they deal. This can lead to a lack of sensitivity to the specific character and needs of co-operative enterprises in the context of more general policies. There is also much concern that there is no reflex to consult co-operative organisations regarding regulatory initiatives that may have an impact on co-operatives. This lack of understanding may also lead to lost opportunities for the promotion of co-operative models where they might be advantageous, for example in considering how to provide services previously provided by the public sector.

Accurate data and efficient consultation, both between public authorities and with representative organisations, are fundamental to developing appropriate policies and programmes for co-operatives.

### **5.2. Contacts with National Level Authorities**

Contacts with, and between, those public services at national level that have responsibility for the regulation and development of co-operatives have generally been rather poor. This can be largely explained by the heterogeneous organisation of such services in the Member States and the transversal nature of co-operative activities across a variety of sectors. In certain Member States this has led to the establishment of inter-ministerial task forces or units.

Contacts between public officials have improved recently through the negotiations in Council working groups relating to the European Co-operative Statute. The French, Swedish and Belgian Presidencies have organised side meetings of national and Commission officials at relevant conferences and seminars. An informal “Troika group” has been established on the initiative of the French, Swedish and Belgian authorities to improve information flows and to ensure a coherent approach across Presidencies. These informal contacts have tended to be rather unstructured and general.

The effective follow-up of the recommendations of this document will depend on a continuous and structured dialogue with national administrations. It is therefore suggested that an ad hoc monitoring group be established including representatives from each national administration (including those of candidate countries). The very diversity of co-operative regulation and development in Member States makes exchanges of experience and benchmarking exercises highly beneficial. Such an ad hoc group would be the basis for this work in the future.

### **5.3. Mainstreaming**

Within the Commission also, many different services have an impact on co-operatives.

In order to ensure that the interests of co-operatives are properly understood and taken into account, and to ensure a co-ordinated Commission approach, contacts should be reinforced between these services. It is natural that Unit B3 of the DG Enterprise should act as a channel for improving such contacts. The Unit should also act as the main (but certainly not the sole) interlocutor for sectoral associations and be able to translate the concerns of these representative bodies to the relevant services.

It would not, however, be appropriate to establish a standing inter-service group on co-operatives. The European policies and programmes affecting co-operatives are too heterogeneous to make bringing all services with relevance to co-operatives around one table regularly. A more effective and efficient approach would be the establishment of a list of interlocutors in the relevant services and an active process of mutual information on questions of common concern. If the potential contribution of co-operatives to the achievement of Community objectives is to be realised, a reflex to consult DG Enterprise should be developed on all relevant policy proposals.

### **5.4. Collection and Use of Accurate Data**

Accurate statistical data is an essential tool in understanding the nature of a sector and in developing suitable policy. To date statistical information regarding co-operatives has been based on either business registry data or survey data. The high level of discrepancies in such data makes it impossible to have an accurate understanding of the importance of co-operatives in Europe. Furthermore, the lack of regular data makes it impossible to have a dynamic view of the development of co-operatives over time.

Business register data, such as that collected in eight Member States during 2001 by EUROSTAT, tends to underestimate the importance of co-operatives. In several Member States a large number of co-operatives remain invisible in such data, co-operatives taking a wide variety of legal forms. Business registry data does have the advantage, however, of making possible a breakdown of activities according to their sector of activity using the NACE codes.

Survey data is normally collected via representative organisations<sup>36</sup>. Such data is only as good as the quality of the responses to questionnaires. This system may also give rise to some “double counting” where one co-operative is a member of more than one federative body. Survey data may include many activities that are not strictly undertaken by co-operatives. For example many co-operatives have non-co-operative subsidiaries with significant turnover. Frequently data relating to the member companies of a second degree co-operative might be included in the turnover or employment figures for the co-operative itself.

In order to improve our understanding of the sector it would be beneficial, in the short term, to follow-up the Business Registers Study undertaken by EUROSTAT and the national statistical institutes of Member States in 2001 with an analytical study of the results.

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<sup>36</sup> For example a major study was financed by the European Commission in 1997 and undertaken by the International Co-operative Alliance.

In the longer term it is suggested that statistical data be collected using both business registers and survey techniques in a co-ordinated manner as follows:

- (1) Agreement of common definitions and indicators with national statistical institutes and co-operative research bodies.
- (2) Study of business register data undertaken by with the national statistical offices of the Member States and co-ordinated by EUROSTAT
- (3) Survey data collected by contractors (probably the apex organisations of co-operatives in each Member State or academic organisations)
- (4) Collation and comparison of data at Member State level to identify and explain differences between business register and survey data.
- (5) Collation of the data at European level and publication.

This process should take place every 5 years and should progressively integrate the candidate countries.

Attempts have been made in more than one Member State<sup>37</sup> to compile data on the basis of satellite accounts to the national accounts. The results of these exercises, and the methods used, might form the basis of a useful exchange of experience between Member State officials and national statistical bodies.

## **5.5. Contacts with Co-operative Representative Organisations**

Co-operatives are well represented at European level. Eight sectoral associations<sup>38</sup> represent their national member associations within the E.U., and most have extended their membership to candidate countries. The sectoral associations co-ordinate the representation of their common interests through the Co-ordinating Committee of European Co-operative Associations (C.C.A.C.E.), which also includes amongst its members certain national multi-sectoral co-operative associations. The Commission has frequent contact with the individual sectoral associations and the C.C.A.C.E. with regard to co-operative issues. Several associations have received significant European funding for their projects and activities.

The International Co-operative Alliance (ICA), based in Geneva, adopted a regional structure in 1994 and now has a Vice President and Director for Europe. In the past ICA Europe has not been particularly active in respect of EU issues, although the level of such contact and activity is increasing, particularly in relation to enlargement. The role of the ICA as a “guardian” of the co-operative principles, rather than as a sectoral interest group, makes it an important interlocutor for the Commission.

In 1998 the Commission sought to encourage improved co-ordination of the representative organisations of co-operatives, mutuals, associations and foundations (CMAFs) through the constitution and financing of a Consultative Committee of CMAFs. The reorganisation of the Commission, and the rationalisation of committee structures through the establishment of the Enterprise Policy Group, led to the dissolution of the Consultative Committee. However the

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<sup>37</sup> For example Spain and Belgium.

<sup>38</sup> ACME, CECODHAS, CECOP, COGECA, EUROCOOP, GEBC, UEPS, UGA.



members of the committee have established a lighter and more autonomous co-ordinating structure in its place – the Permanent European Conference of CMAFs.

The Commission, and particularly DG Enterprise, will continue and deepen its dialogue with these existing representative structures and will take into account the opinions put forward by them.

The co-operative movement continues to play an important role in the orientation of DG Enterprise activities through the Enterprise Policy Group (EPG) Professional Chamber in which two seats are held by representatives of co-operative organisations.

The Commission has supported seven European Conferences of the Social Economy between 1989 and 2001. The most recent such conference was organised by the Swedish Government (in Gävle, June 2001). These conferences are an important point of contact with co-operatives and other social economy organisations. Two further conferences of the social and solidarity-based economy have been organised by the French and Belgian Presidencies, the latter with Commission support. During 2002 social economy conferences will be organised in Spain (Salamanca, May) and the Czech Republic (Prague, October). The Commission will continue to assist the practical organisation of such conferences, whilst encouraging representative and government organisations to take the lead. It is particularly important that organisations and administrations of candidate countries be further involved in future conferences.