



**Country report: (3) Transposition**

**Implementation in Malta of: Council Regulation (EC) 1435/2003 of 22 July 2003:  
Statute for a European Cooperative Society (SCE)**

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The draft legal notice for transposition of the SCE Directive into Maltese law is still being debated. Some of the provisions of the draft may not be in line with the principles laid down in the Cooperative Societies Act (2001) which governs the registration and operations of Maltese cooperatives.

## Implementation in Malta of:

### **Council Regulation (EC) 1435/2003 of 22 July 2003 Statute for a European Cooperative Society (SCE)**

#### **1. Legislation Regulating Maltese Cooperatives**

Malta has a law dedicated to cooperatives, the **Cooperatives Society Act (2001)**, distinct from both the Civil Code and the Companies Act. According to Article 31 of this Act, once registered, cooperatives are corporate bodies having limited liability and a separate and distinct legal personality from that of their members. Unless a cooperative's statute provides otherwise, all members have one vote. At the end of each accounting period profits are to be distributed among the members after the transfer of at least 20% to a reserve fund, to be used exclusively to cover any losses incurred by the society (Article 90). Furthermore every cooperative is bound to contribute 5% of its profits to a Central Cooperative Fund which is used for the furtherance of cooperative education, training and research, and for the general development of the cooperative movement (Article 91).

With regard to taxation Article 12(q) of the Income Tax Act exempts the income of cooperatives from the payment of corporate tax. However, distributions of dividends, bonus shares or certificates, and disbursements from patronage funds to members of the cooperative are all subject to full personal income tax.

The Board of Cooperatives, the registrar and supervisory organ of Maltese cooperatives, has expressed concerns about the right granted to legal entities to register as an SCE as it might not be in line with the core principles, laid down in this Act, which govern the operations of cooperatives. This Act, enacted in 2001, 'has taken pains to endow these principles with a higher status and to make them more effective in practice' (D. Fabri, 2006: p. 13).

#### **2. Cooperatives in Malta**

The last Cooperative Directory, issued in 2000, lists 45 cooperatives. According to the Secretary of the Board of Cooperatives, the present number of registered cooperatives in Malta is 58, with approximately 4,569 members. One of these is a secondary cooperative which gathers within its fold seven primary agricultural cooperatives. This cooperative, which employs 30 persons, is responsible for about 26% of the agricultural

sales in the main agricultural market. Although the cooperative movement has managed to branch out into areas outside the agricultural sector, cooperatives are still marginalised in relation to the main economy. Most of them serve as an umbrella organisation for the vested interest of their members. Cooperatives can be classified into five types:

1. **Producer** cooperatives catering for farmers, fishermen and herdsmen. The role of this type of cooperative is that of intermediary in the sense that it collects the produce of the members and sells it at the most profitable price. The commission which it earns through the sale of these products is the main source of its funding.
2. **Consumer** cooperatives operating in the agriculture and fisheries sector provide a retail outlet which enables their members to buy what they need for their operations at a reasonable price. Members get a share of the profits in proportion to the amount of their sales from this outlet.
3. **Worker** cooperatives are found in the service sector, drivers of minibuses and coaches, waste collection, and printing. The members are both employees and owners of the cooperative.
4. **Social** cooperatives are socially committed to helping the disadvantaged and the disabled.
5. Cooperatives in the **public sector**, set up in 1996 after prolonged discussions between government and trade unions, were envisaged as an alternative to privatisation. This scheme enables employees to set up a cooperative within their department. Cooperative societies set up in accordance with this scheme are registered in a separate register, clearly identifying their purpose. To date, four cooperatives have been registered under this scheme in the public sector and two more in independent statutory bodies, with a total number of 100 members. Although the number of public sector employees who have taken this opportunity to set up a cooperative is rather low, they have nevertheless established a working model in a sector rarely praised for its productivity or efficiency.

### 3. Transposition

EU Directives are generally transposed through the issue of a legal notice by the minister concerned. The process leading up to this is a tripartite one as the draft legal notice is initially sent from the Ministry of Employment and Industrial Relations to a tripartite board, known as the Employment Relations Board, which is regulated by Section 3 of the Employment and Industrial Relations Act (EIRA 2002). This board is composed of representatives of the social partners (employers' representatives and trade union executives), together with representatives of the government. Following discussions, the draft is amended and sent back to the Ministry for final review. The Directive is then implemented by means of a Legal Notice that has the force of law.

So far (27 July 2006) the amended draft has been sent to the Minister for approval. According to the Secretary of the Board of Cooperatives, the draft is still being debated. It is likely to be transposed by the end of August.

#### 4. Salient Features of the Draft Legal Notice

(a) In transposing the definition of '**participation**' and '**consultation**' from the EC Regulation a slight change in the draft should be noted: '**OR BOTH**' has been inserted after 'employee representatives', as follows:

'Influence of the representative body of the employees or employee representatives, OR BOTH, in the affairs of the legal entity.'

(b) The provisions regulating the setting up of a Special Negotiating Body (SNB) are similar to those in the transposition of the SE Directive:

- negotiations to start with representatives of the legal entity
- setting up an SNB to reach an agreement on employee involvement
- entitlement to elect or appoint one member to the SNB for every 10% of the total number of employees or fraction thereof
- selection of Maltese members by secret ballot
- management and administrative organs of the participating legal entities to which these regulations apply shall be responsible for holding ballots
- a trade union representative, even if not an employee of the participating legal entity or its subsidiaries or establishments, is entitled to stand as a candidate for election as a member of the SNB
- the regulations on SNBs apply to ex novo established by natural persons or by a single entity

(c) Entitlement of employees to participate in general meeting

The draft retained the optional 'may' as in Article 59 (4) of the Regulation which states 'may provide for the participation of employees'.

The draft states:

'The agreement may specify the arrangements for the entitlement of employees to participate in the general meeting or in sectional or sectoral meetings' (Article 9 (7)).

There is no system of employee participation in Maltese cooperatives. For employee participation to be established therefore the parties must reach agreement.

(d) Before and After Principle

The draft contains a Schedule Part 3 about Standard Rules for Participation which spells out the 'Before and After' Principles in the Regulation.

These do not apply to Maltese cooperatives as there is no legal provision on employee participation in the Cooperative Society Act (2001). There is no practical experience of it either.

## 5. Dissemination of Information

The quarterly Newsletter *Koperattivi* issued by the Central Cooperative Fund, managed by the Board of Cooperatives, has given wide coverage to the Directive. Three separate issues (Nos 5, 10 and 12) include articles explaining the Directive's implications.

### References

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Fabri, D. (2006) 'Cooperatives – Comparative Law and Economic Foundations', in D. Fabri et al., *Reconsidering Cooperatives: Lessons for Maltese Co-ops* (Malta: APS Bank Publication), pp. 1–54.

Interview with Secretary of the Board of Cooperatives (6 July 2006).