

# THE LONG MARCH OF THE EUROPEAN COOPERATIVE SOCIETY\*

By Chantal Chomel\*\*

*Working in trade organizations and representing France in the Council, Chantal Chomel was an important participant in the process that led to the creation of the European Cooperative Society statute in 2003. Here she retraces the different stages of a process that had its beginnings in the 1960s. The idea of a European cooperative statute, which first appeared within the European cooperative movements and then spread among the European Community institutions and Member States, became a reality thanks to the commitment of the men and women whose decisive role is highlighted in this article.*

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This article recalls the many stages in the long process of drafting Council Regulation 1435/2003 on the European cooperative society statute prior to its publication in the *Official Journal of the European Union* on 18 August 2003. It does not pretend to be exhaustive and only aims to identify some key developments in this collective journey, which has been punctuated by moments of hope and periods of discouragement, when we sometimes thought that the project would end up on the huge pile of utopias collecting dust in a forgotten corner of the library. Many partners from various areas participated in the process that led to the publication of this regulation and the accompanying directive on employee involvement. The actors in this both political and legal project will, I hope, forgive me for any omissions I may have made.

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## Beginnings

The idea of a European company was practically contemporaneous with European integration. Between the idea and the proposal, which has now become law, a period of time elapsed—time for reflection and gestation, for recognizing the reality of the cooperative movement, and for the European institutions to take into account the cooperative movement's legitimate interests.

In 1964, the European Commission began the groundwork for creating a “European commercial company.” At that time, there were a number of questions about whether the company should come under national legislation and be identical in all countries or come under European legislation,

which was still in its infancy. Questions on this subject were submitted to the Commission by European MPs. In April 1966, the Commission issued a memorandum to the Council of Ministers on the usefulness of a European commercial company statute. The cooperative society was not officially mentioned, but the idea appears to have been raised in the departments of the Commission. This idea was also being developed in the thinking of the cooperative movement.

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## **A new awareness in the European cooperative movements**

Trade associations soon began thinking about the issue and became convinced that recognition by the European Union of the importance of cooperatives in terms of employment, economic activities, and the role of regions, etc., required the creation of a common European legal instrument. This instrument should also facilitate the formation of economic entities on the scale of the new union of states that was being constructed. There were thus two objectives: recognizing the specific features of cooperatives and allowing them to participate fully in the economic changes that were to come without them having to give up their identity and become conventional companies.

Consequently, in 1970 COGECA (General Confederation of Agricultural Cooperatives in the European Union) published a nine-part statute for a European cooperative society that was the precursor to the current regulation. This text already resolved a certain number of issues, such as whether a cooperative was a company or a nonprofit organization. It was decided that a cooperative was a company with its capital divided into shares. The cooperative society could be constituted of physical persons or enterprises. As in the current text, many parts related to cooperative statutes. However, the one major difference was the absence of any reference to the national laws of Member States, which made the text clearer.

It is striking that this statute was not a European agricultural cooperative statute but rather a cooperative statute. The trade associations already understood that they would have to overcome their sectoral differences and give up practices and customs to which they might be legitimately attached if they wanted to succeed on the European level.

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## **Forming alliances to be recognized and heard in Europe...**

A second stage was the realization that this statute would never come about if the cooperative movement did not find allies in the European institutions and in the Member States since only they had the power to make decisions. I do not know if the initiators realized at the time how much determination and conviction would be needed to overcome all the obstacles as well as the fact that this would consume their energies for more than

twenty years! We thus learned that the decision-making process in the European Union clearly contained a bit of complexity and subtlety but also a no less significant bit of opaqueness.

In this respect, I would like to mention an anecdote. One day, while we were in a meeting at the SGCI<sup>(1)</sup> to prepare the next ministerial session on the internal market, the head of legal affairs questioned the relevance of putting the European Cooperative Society (SCE) statute on the agenda given that there was already a directive on elevators! There was no connection of course, but priorities needed to be set, and fortunately for us the department responsible for elevators thought that it was in France's best interests to delay the elevator directive, consequently making it possible to put the SCE regulation on the agenda! During this phase, the European Economic and Social Committee (ESC) and the European Parliament became two key allies in this project and, without their support, nothing would have been possible.

In 1978, the European ESC carried out the first study on cooperatives, mutual societies and nonprofit associations, which highlighted their role in regenerating regions and promoting democracy. Two years later, in 1980, the European Parliament entered the scene and asked, in a resolution to the Commission, both for greater recognition of the European cooperative movement and to consider a proposal for a European cooperative statute.

Following the Mirh report in 1983, the European Parliament passed a resolution addressed to the Commission asking for greater recognition of the role of cooperatives in regional development, and the issue of harmonizing statutes came up again. At the time, the debate between statute harmonization and the creation of a European statute was still unresolved. In 1986, the first Conference of the Social Economy took place at the ESC with the Coordinating Committee of Cooperative Associations (CCACC), which was the predecessor of the CCACE. A new resolution of the European Parliament in 1987 asked the Commission to set up a program for developing cooperatives. In 1988, it was the ESC's turn to invite the Commission to draft a specific European statute for cooperatives.

(1) Inter-ministerial committee for European economic cooperation. As part of the Prime Minister's office, this committee chooses the government's position for the working parties in Brussels based on the arguments put forward by the different ministerial departments.

## ...and in the Member States

(2) Institut de coopération sociale internationale.

There was also active lobbying taking place in the Member States. In France, a working group headed by Roger Louet, then president of ICOSI,<sup>(2)</sup> and set up by the minister responsible for the DIES, Hervé de Charette, was given the mission of *“studying, based on the existing situation and the perspective of a common market, the means that would be needed from now until 1992 to enable cooperative enterprises to confront, under conditions of fair competition, the complete opening of the borders to the free circulation of people, goods and capital.”*

This group submitted a report by François Espagne which, in responding to the issue of fair competition between cooperatives and other companies, took a position on the question of harmonization by recommending the creation of a specific statute for a European cooperative society. The report defined the main objectives and aims of the statute. The statute was conceived as a regulation that incorporated cooperative principles into law and, if necessary, referred back to national law for features specific to individual categories of cooperatives. This technique would be widely used in the current text.

In the report summarizing the first *Rencontres européennes de l'économie sociale*, which took place in Paris in November 1989, the European cooperative movements (and, more broadly, the social economy movements) together called for the creation of a European cooperative statute.

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## ● Back to Brussels and the start of the “decision-making” phase

Recognition of the social economy by European institutions in Brussels took a decisive step forward with the creation of the social economy unit during the 23rd DG in 1990. The same year, the European Parliament set up a cross-parliamentary group on the social economy headed by Marie-Claude Vayssade. This group proposed to the Commission to draft the proposals for regulations for each type of social-economy enterprise—cooperatives, associations and mutual societies—and to take into account employees' rights to information.

This would be done. In December 1991, the Commission adopted three proposals for regulations relating to statutes for cooperatives, mutual societies and associations, coupled with three directives relating to employee involvement, which satisfied the request from the European Parliament. On 11 March 1992, these texts were sent to the Council and were adopted by the European Parliament. The work then entered the “decision-making” phase, which would last more than ten years!

Two important legal/political problems affected the decision-making process and were one of the causes for the prolonged duration of this phase.

- The problem of the legal basis: the Commission and Parliament argued for a legal basis that allowed adoption by a qualified majority (articles 100A, later 95, and 54, later 44), whereas the Council demanded adoption by unanimity (article 308 today, ex-article 235). This latter position, which would increase the powers of the Council and therefore the States to the detriment of the European institutions (Commission and Parliament) was finally accepted. This had important consequences, not only on the time it would take to do the work, but especially on the wording of the final draft. The solution in case of a disagreement by a particular Member State was to refer to national law, which respected the traditions of each State but also made the new text more complicated and limited the ambition for a common and totally operational statute. The Member States seemed

to have more reservations than the cooperative movement representatives.

• The problem of the directive on employee involvement: some countries were against this (particularly the United Kingdom and Ireland), while Germany found the text lacking with regards to the principles of co-determination practiced there and which had an almost constitutional value in Germany. Another problem of the “adoption strategy” came up during these years. Should the three social economy texts be adopted together? Some Member States categorically refused to accept this possibility. Or should they be separate? And should the European cooperative society statute be joined with the European company statute? Today, the debate is over. The Nice summit decided in favor of linking it with the European company statute. It has to be said that the work in the Council went through a rather discouraging period of inactivity from 1995 until the Nice summit in December 2000, when new life was breathed into the European company statute, and by the same token, into the European cooperative society statute. The final chapter in adopting the texts was closed in July 2003, unless there is another twist to come from Parliament’s side! This statute was the fruit of the collective work of the Member States, the institutions and the movements which, however, are made up of men and women. At the risk of forgetting some of them, and I hope you will excuse me if that is the case, I would like to mention a few people who played a decisive role.

• François Espagne, whose deep and vast knowledge of cooperatives always informed our thinking and whose questions stimulated our discussions;

• Paul Ramadier, the first head of the Commission’s social economy unit who, along with his team (and Franco Ianniello), played a key role in this work. He was advised throughout this journey by Bernard Piot, who brought his expertise, creativity and a ready ear, all much needed when compromises have to be found that are acceptable to legal cultures as different as those of the French, the Germans and the British;

• Marie-Claude Vayssade, who got her parliamentary colleagues involved and turned the European Parliament into a decisive ally in this adventure;

• The Social Economy Delegation and Marcel Hipszman in particular who, in his position as deputy delegate for the social economy, steadfastly represented France in the group of the Council and whose commitment to this project never wavered (and everyone knows that France’s position was a key element of our success!);

• And of course all of the people who run the French and European cooperative movements, in particular the successive presidents of the GNC, J. Moreau and J.-C. Detilleux, who in the CCACE, under the leadership of E. Pfimlin and later that of I. Barberini, continued to lobby actively with tenacity and without losing heart when the situation looked grim!

The future of this text now remains to be constructed when it is implemented in August 2006 and the European cooperative society becomes a reality. Hopefully, the actors will not be too discouraged by the complexity of the regulation, but the ingenuity of lawyers should never be underestimated. ●