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Council Regulation (EC) No 1435/2003 on the Statute for a European Cooperative Society (SCE) Implementation Act

Passed 14.12.2005
RT I 2005, 71, 543
Entry into force 18.08.2006

Amended by the following acts

Passed	Published	Entry into force
10.10.2012	RT I, 25.10.2012, 1	01.12.2012
11.06.2014	RT I, 21.06.2014, 8	01.01.2015
13.04.2022	RT I, 05.05.2022, 1	01.02.2023

Chapter 1 GENERAL PROVISIONS

§ 1. Provisions applicable to European Cooperative Society

(1) This Act regulates the legal status of a European Cooperative Society (*Societas Cooperativa Europaea*, hereinafter *SCE*) located in Estonia insofar as this is not regulated by Council Regulation (EC) No 1435/2003 on the Statute for a European Cooperative Society (SCE) (OJ L 207, 18.08.2003, p. 1–24) (hereinafter *Regulation*).

(2) This Act and other national legislation apply to an SCE if, pursuant to the Regulation, the provisions of national law apply or if the Regulation provides an opportunity to govern certain areas based on the national law.

§ 2. Entry of SCE in commercial register

An SCE is entered in the commercial register pursuant to the provisions of the Commercial Register Act and the Commercial Associations Act concerning entry of a commercial association in the commercial register. [RT I, 05.05.2022, 1 – entry into force 01.02.2023]

§ 3. Competence

(1) The obligation provided for in Article 7.8 of the Regulation shall be performed by the registrar. [RT I, 21.06.2014, 8 - entry into force 01.01.2015]

(2) The obligation provided for in Article 29.2 of the Regulation shall be performed by the registrar. [RT I, 21.06.2014, 8 - entry into force 01.01.2015]

(3) The obligations provided for in Article 30 of the Regulation shall be performed by the registrar. [RT I, 21.06.2014, 8 - entry into force 01.01.2015]

(4) The obligation specified in Article 73.5 of the Regulation shall be performed by the court who established the infringement provided for in Article 6 of the Regulation.

Chapter 2

TRANSFER OF REGISTERED OFFICE OF SCE

§ 4. Publication of transfer proposal

The management organ shall submit the transfer proposal examined in Article 7.2 of the Regulation to the registrar of the commercial register and publish a notice concerning the transfer proposal being drawn up in the official publication *Ametlikud Teadaanded*. The notice shall set out that the transfer proposal is available for examination in the registration department and in a place designated by the management organ.

§ 5. Protection of creditors in case of transfer of registered office

(1) The creditors of an SCE planning to transfer its registered office may, within two months as of the publication of the transfer proposal, submit to the SCE their claims for the receipt of security.

(2) The SCE shall guarantee the claims of creditors submitted within two months as of the publication of the transfer proposal if the creditors cannot demand their claims to be satisfied and they substantiate that the transfer of the registered office may adversely affect the fulfilment of their claims.

§ 6. Consent of Tax and Customs Board in case of transfer of registered office of SCE

(1) When the registered office of an SCE is transferred from Estonia to another Member State of the European Union, the registrar shall not issue a certificate provided for in Article 7.8 of the Regulation without the consent of the Tax and Customs Board.

[RT I, 25.10.2012, 1 - entry into force 01.12.2012]

(2) In order to obtain the consent, the registrar shall submit a written request to the Tax and Customs Board.

(3) The Tax and Customs Board may not refuse to grant the consent if it does not have any claims against the SCE and also if the Tax and Customs Board deems it probable that no violation of tax law is established in the course of the inspection procedure conducted by a tax authority at the time of the request for the consent.

(4) If the consent is not received within twenty days after sending the request, the Tax and Customs Board shall be deemed to agree to the transfer of the registered office.

Chapter 3 FORMATION OF SCE

Subchapter 1 Formation of SCE by merger

§ 7. Consent of Tax and Customs Board in case of formation of SCE by merger

(1) If a commercial association registered with the Estonian commercial register which is dissolved as a result of the formation of the SCE in a foreign state participates in the formation of the SCE by way of merger, the registrar shall not issue the certificate provided for in Article 29.2 of the Regulation without the consent of the Tax and Customs Board.

[RT I, 25.10.2012, 1 - entry into force 01.12.2012]

(2) In order to obtain the consent, the registrar shall submit a written request to the Tax and Customs Board.

(3) The Tax and Customs Board may not refuse to grant the consent if it does not have any claims against the SCE and also if the Tax and Customs Board deems it probable that no violation of tax law is established in the course of the inspection procedure conducted by a tax authority at the time of the request for the consent.

(4) If the consent is not received within twenty days after sending the request, the Tax and Customs Board shall be deemed to agree to formation of the SCE by way of merger.

§ 8. Communication of merger

The particulars specified in Article 24 of the Regulation concerning the merging companies shall be published in the publication *Ametlikud Teadaanded* together with a notice concerning the merger as provided for in § 399 of the Commercial Code.

Subchapter 2

Conversion of existing commercial association into SCE

§ 9. Publication of draft terms of conversion

At least one month before the general meeting deciding on the conversion of an existing commercial association into an SCE, the management organ shall submit the draft terms of conversion to the registrar of the commercial register and shall publish a notice concerning the drawing up of the draft terms of conversion in the publication *Ametlikud Teadaanded*. The notice shall set out that the draft terms of conversion are available for examination in the registration department and in a place designated by the management organ.

Chapter 4 SCE ORGANS

Subchapter 1 Two-tier system

§ 10. Performing management functions by members of supervisory organ

(1) Pursuant to Article 37.3 of the Regulation, the supervisory organ may appoint its member to exercise the function of member of the management organ for a predetermined fixed term which shall not exceed one year.

(2) Re-appointment and extension of term of authority is permitted if the total term of authority of member of a supervisory organ acting as a member of the management organ does not exceed one year.

§ 11. Transactions for conclusion of which consent of supervisory organ is needed

The supervisory organ may, by its resolution, determine transactions for the conclusion of which the consent of the supervisory organ is needed.

Subchapter 2 One-tier system

§ 12. Members of management organ

The management organ shall consist of three members unless the statutes prescribe a greater number of members.

Subchapter 3 Representation of SCE

§ 13. Right of representation of management organ

A SCE may grant, by its statutes, the right of representation to one member of the management organ or several members of the management organ in such way that some or all of the members of the management organ are authorised to represent the SCE jointly. Joint representation shall apply with regard to third persons only if it is entered in the commercial register.

Chapter 5 WINDING-UP

§ 14. Winding-up of SCE

(1) If an SCE registered with the commercial register in Estonia no longer conforms to the requirements provided for in Article 6 of the Regulation, the registrar shall set a term for the SCE during which the SCE must transfer its management to Estonia or transfer its registered office to another Member State in accordance with Article 7 of the Regulation. The term shall not be shorter than two months.

(2) If the SCE fails to eliminate the omissions during the set term, the registrar may decide on the compulsory winding-up of the SCE.

Chapter 6

IMPLEMENTING PROVISIONS

§ 15. Amendment to State Fees Act

[Omitted from this text.]

§ 16. Entry into force of Act

This Act enters into force on 18 August 2006.