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COVER NOTE

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2020) 183 final
Subject:	Proposal for a COUNCIL REGULATION on temporary measures concerning the general meetings of European companies (SE) and of European Cooperative Societies (SCE)

Delegations will find attached document COM(2020) 183 final.

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Proposal for a

COUNCIL REGULATION

on temporary measures concerning the general meetings of European companies (SE) and of European Cooperative Societies (SCE)

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute of European Companies and Council Regulation (EC) No 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE) provide rules for the setting-up and operation of the respective entities they regulate (SEs and SCEs). Both the SE Regulation and the SCE Regulation also harmonise the deadline for holding the general meeting. Both Regulations provide an identical rule under their respective article 54, according to which, SEs and SCEs shall hold a general meeting at least once each calendar year, within six months of the end of their financial year. The Regulations do not provide any exception to this.

The outbreak of the Covid-19 pandemic has a serious impact on companies and cooperative societies, including SEs and SCEs. In particular, due to the confinement and social distancing measures, as well as to the need to concentrate their efforts on managing the economic activity constraints, SEs and SCEs face considerable difficulties to respect the deadline to hold their general meeting referred to in Article 54 of their respective regulations. While Member States have put in place emergency measures in the area of company law to support and help companies to comply with the current exceptional circumstances, such measures do not address the SEs nor the SCEs, because, in both cases, their Statute is an EU Regulation.

The holding of general meetings is of essential importance to ensure that legally required or economically necessary decisions having impact on the company itself, its shareholders and third parties are taken in due time. Given that the exceptional circumstances due to Covid-19 are beyond the control of SEs, SCEs and Member States alike, this proposal sets at EU level a temporary derogation to the deadline provided for in Article 54 of the SE Regulation and Article 54 of the SCE Regulation. Such a temporary derogation should provide the flexibility for the SEs and the SCEs to hold their general meeting within 12 months of the end of the financial year, but in any case no later than 31 December 2020. This temporary derogation is necessary in order to allow the SEs and the SCEs to ensure the necessary preparations of the general meetings and to provide legal certainty as regards the fulfilment of the obligations laid down in the SE and SCE Regulations.

Furthermore, Article 53 of the SE Regulation provides that the organisation and conduct of general meetings together with voting procedures shall be governed by the law applicable to public limited-liability companies in the Member State in which the SE's registered office is situated. Article 53 of the SCE Regulation provides a corresponding rule. Similar to national emergency measures already adopted by many Member States regarding public limited liability or other companies or entities, it is important that Member States ensure, in line with Article 53 of the respective regulations, that SEs and SCEs are allowed to use digital tools and processes and that SEs and SCEs endeavour to apply such tools and processes to the maximum extent possible in order to ensure that the necessary decisions are taken.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

The proposal is based on Article 352 of the Treaty on the Functioning of the European Union (TFEU). That provision specifies that if action by the Union should prove necessary, within the framework of the policies defined in the Treaties, to attain one of the objectives set out in the Treaties, and the Treaties have not provided the necessary powers, the Council, acting unanimously on a proposal from the Commission and after obtaining the consent of the European Parliament, shall adopt the appropriate measures, and it already served as a legal basis for the adoption of Regulation (EC) NO 2157/2001 and of Regulation (EC) No 1435/2003.

• Subsidiarity

The objectives of the proposal cannot be sufficiently achieved by the Member States because European Companies (SEs) are regulated at Union level by Council Regulation (EC) No 2157/2001 and European Cooperative Societies (SCEs) are regulated at Union level by Council Regulation (EC) No 1435/2003. Any temporary measures due to the COVID-19 crisis departing from these Regulations need to be adopted at Union level.

• Proportionality

The proposal does not go beyond what is necessary to achieve the objective of alleviating the impact of the current COVID-19 outbreak for the holding of general meetings of SEs and of SCEs. The proposed measure is therefore proportionate including in respect of its application in time.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

• Ex-post evaluations/fitness checks of existing legislation

This urgent measure is triggered by the sudden and unforeseeable outbreak of the Covid-19 pandemic. For this reason, no impact assessment or ex-post evaluation has been carried out. Several stakeholders have called for a legislative solution on the issue.

4. BUDGETARY IMPLICATIONS

Not applicable.

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(Text with EEA relevance)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 352 thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with a special legislative procedure,

Whereas:

(1) In order to contain the spread of the Coronavirus COVID-19, which on 11 March 2020 was declared a pandemic by the World Health Organisation, Member States have put in place a set of unprecedented measures, particularly measures of confinement and social distancing of persons.

(2) Those measures may prevent the companies and cooperative societies from complying with their legal obligations under national and Union company law, in particular, by creating considerable difficulties for them to organise their general meetings.

(3) At national level, Member States have put in place emergency measures supporting companies and cooperative societies and providing them with the necessary tools and flexibility in the current exceptional circumstances. In particular, many Member States have enabled the use of digital tools and processes to hold general meetings and have extended the time-limits for the holding of general meetings in 2020.

(4) At Union level, European companies (SEs) are regulated by Council Regulation (EC) No 2157/2001[1] and European Cooperative Societies (SCEs) are regulated by Council Regulation (EC) No 1435/2003[2]. Both Regulations require in their respective Articles 54 that a general meeting is held within six months of the end of the financial year. Having regard to the current exceptional circumstances a temporary derogation from that requirement should be granted. Given that the holding of general meetings is of essential importance to ensure that legally required or economically necessary decisions are taken in due time, the SEs and SCEs should be allowed to hold their general meeting within 12 months of the end of the financial year provided that it is held no later than 31 December 2020. Being a temporary measure due to Covid-19, the derogation should only be applicable to the general meetings that are required to be held in 2020.

(5) The Treaty on the Functioning of the European Union does not provide, for the adoption of this Regulation, powers other than those under Article 352.

(6) Since the objectives of this Regulation, namely to provide a temporary emergency solution derogating from a provision of Regulation (EC) No 2157/2001 and from a provision of Regulation (EC) No 1435/2003, cannot be sufficiently achieved by the Member States but can rather, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

(7) In view of the fact that the six months period referred to in Articles 54 of Regulations (EC) No 2157/2001 and (EC) No 1435/2003, will expire in May or June 2020, and given that convening periods will have to be taken into account, this Regulation should enter into force as a matter of urgency.

(8) In view of that urgency, it is considered to be appropriate to use the exception from the eight-week period referred to in Article 4 of Protocol No 1 on the role of national Parliaments in the European Union, annexed to the Treaty on European Union, to the Treaty on the Functioning of the European Union and to the Treaty establishing the European Atomic Energy Community

HAS ADOPTED THIS REGULATION:

Article 1

Temporary measure concerning the general meetings of European companies (SE)

[1] Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE) (OJ L 294, 10.11.2001, p. 1).

[2] Council Regulation (EC) No 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE) (OJ L 207, 18.8.2003, p. 1).

Where, in accordance with the first sentence of Article 54(1) of Regulation (EC) No 2157/2001, a general meeting of an SE is to be held in 2020, the SE may, by way of derogation from that provision, hold the meeting within 12 months of the end of the financial year, provided that the meeting is held on 31 December 2020 at the latest.

Article 2

Temporary measure concerning the general meetings of European Cooperative Societies (SCE)

Where, in accordance with the first sentence of Article 54(1) of Regulation (EC) No 1435/2003, a general meeting of an SCE is to be held in 2020, the SCE may, by way of derogation from that provision, hold the meeting within 12 months of the end of the financial year, provided that the meeting is held on 31 December 2020 at the latest.

Article 3

Entry into force

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Council
The President