The Implementation of the SCE Regulation in Austria

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“The Implementation of the Regulation 1435/2003 on the Statute European Cooperative Society (SCE) in Europe”

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1. The implementation of SCE Regulation 1435/2003 in Austria

1.1. Source, time and modes of implementation
The SCE Regulation has been implemented with the GenRAeG 2006, which was published on June 26, 2006, in the Austrian Bundesgesetzblatt, BGBl I No 104/2006. It includes the SCEG (law on SCEs) as a whole, as well as modifications of the existing federal law on cooperatives. Furthermore, the GenRAeG 2006 provides other adaptations that are necessary in order to introduce the SCE into the existing body of Austrian law: These include amendments to the Gerichtsgebuehrengesetz (GGG; Court Fee Act), to the Bankwesengesetz (BWG; Banking Act), the Versicherungsaufsichtsgesetz (VAG; Insurance Supervision Act) and to the Arbeitsverfassungsgesetz (ArbVG, Law Governing the Employment System).

Due to the regulations mentioned the formation of an SCE in Austria is possible since August 18, 2006.

1.2. Structure and main contents of the regulation
The SCEG contains 33 sections and consists largely of references to national law governing joint stock companies and cooperative societies. The SCEG for instance regulates procedures for establishing an SCE, transferring the registered office of an SCE to another country and defines the possible management structures of an SCE. The management functions of an SCE may be segmented into a Supervisory Board and a Management Board (two-tier structure, dualistic governance structure) or may be exercised solely by an Administrative Board (one-tier structure, monistic governance structure). For any matter on which there is no specific provision in Austrian law, the principles of the SCE Regulation apply.

The council directive 2003/72/EC of July 22, 2003, was implemented by changing the Arbeitsverfassungsgesetz (ArbVG).

1.3. Designated authority, as provided for by article 78, paragraph 2, SCE Regulation
Section 4 SCEG stipulates that for the addition of an SCE in the commercial register and other matters named in articles 7, 29, 30, 54 para 2 and 73 of the regulation the courts of first instance for commercial matters are responsible.

1 The amendments to the ArbVG have been necessary for the implementation of the directive 2003/73/EG.
1.4. Essential bibliography


Avsec, Franci: Die Europäische Genossenschaft innerhalb des Europäischen Wirtschaftsraumes (The SCE inside the european economic union), Marburger Beiträge zum Genossenschaftswesen 53, Marburg 2009.


Fiedler, Mathias: SCE-Gruendungserfahrungen in Deutschland (SCE-start-up experiences in Germany), Neue Koelner Genossenschaftswissenschaft, Band 5/1, Münster 2009, p. 132 – 140.


Hable, Andreas: SCE – Neue Rechtsform fuer Unternehmen (SCE – A new legal structure for companies); online available on: http://www.wirtschaftsblatt.at/home/2070/index.do (accessed 2009-12-30).

Hofinger Hans/ Johler Christoph: Wettbewerb der genossenschaftlichen Rechtsformen in der SCE (Competition of cooperative legal forms in the SCE), Ziller-Schriften/3, OeGV Vienna 2002.

Hofinger Hans/ Johler Christoph: Substanzbeteiligung in der Europäischen Genossenschaft (SCE) unter Berücksichtigung nationaler Rahmenbedingungen (Participation in real value in the SCE with special focus on national provisions), Ziller-Schriften/5, OeGV Vienna 2005.


Legislative documents:


BGBl I No 104/2006.

BGBl I No 70/2008.
2. Comments on the implementation of the SCE Regulation in Austria

Currently there is no SCE existing in Austria.

This information is based on the interviews made and several phone calls with the Federal Ministry of Justice, which is the best official source of information in this regard. It was verified by an excerpt (December 2009) of the commercial register.

According to the information available at present there is also no concrete plan for setting up any SCE in the upcoming future.

According to the national experts that were interviewed, the most important factor for the fact that no SCE exists in Austria is the lack of necessity for the use of cooperatives in cross border activities. Without a doubt the SCE in theory offers a huge potential, but currently there is not only a lack of publicity of the SCE regulation, but also no demand on the ground.

Cooperatives that are set up in Austria mainly act in a predominantly regional way, which has to be considered as one of the main reasons for their success, even in times of difficult economic environment\(^2\). Another crucial point might be that cooperatives traditionally are strongly linked with matters of identity (local, regional), what may be difficult to facilitate in an SCE.\(^3\)

One possible area of application for SCEs might be for people/businesses located in border areas. In such a case, the necessity of cross border activities obviously is almost a given. Furthermore, it is of course obligatory to act in harmony with competition law, which has an especially important impact on big cooperatives with strong cross border activities – but competition law does not seem to prohibit the establishing of cooperatives. Furthermore, the back-office in the banking sector could be a possible field of application, as well as consultancy. One of the problems might be that the SCE does not offer any obvious advantage compared to national cooperatives if there is not a lot of cross border activities.

Potential stakeholders also shy away from being the frontrunner in starting up the first SCE (in Austria). It would be of help if a huge SCE would be set up as a role model, which then could cause several articles in newspapers or on TV. Also a “SCE homepage” with legal


\(^3\) It is interesting that the situation in Germany obviously is very similar to Austria. See Fiedler: SCE-Gruendungserfahrungen in Deutschland (SCE-start-up experiences in Germany), Neuer Koelner Genossenschaftswissenschaft, Band 5/1, Muenster 2009, p. 140.
information about starting up an SCE and about the particular cooperative law in the EU-member-states would be of help to support the SCE and cooperatives in general. The public is not sufficiently informed about the legal form of the SCE, although there is information about most of the European legal forms available. Of course, the SCE is part of university education⁴, but in comparison to other forms of corporate law still with low importance. If the annual number of business start-ups is taken into account it is easily understandable that the public attention tends to focus on other legal forms.⁵

Furthermore, a point to bear in mind is that the implementation acts differ from country to country, so that there are 27 possible types of SCEs in Europe. In this regard, the harmonization efforts only partially succeeded.⁶

There are significant efforts though to enhance the publicity of SCEs in Austria. The cooperative associations have media tools at their disposal. The journals “cooperativ” and “Raiffeisenblatt” are used to inform a wider public about their activities and specific questions concerning cooperatives. An interesting attempt to inform even a very young audience playfully about cooperatives has been the work-shop “7 Zwerge Genossenschaft⁷” within the Vienna Summer University for Kids.⁸ Due to the success it is highly probable that the workshop is going to take place again this summer.

Pertaining to the legal side of the SCE it was feared that the implementation of the Commission Directive 2003/72/EC of 22 July 2003 – supplementing the Statute for a European Cooperative Society with regard to the involvement of employees, made by an amendment of the Arbeitsverfassungsgesetz (ArbVG, Law Governing the Employment System) with articles 254ff – could be problematic. The regulations are very similar to the regulations concerning the involvement of employees in the SE. Because of these strong similarities to the SE regulation, the arrangement and the regulations of the implementation itself were uncomplicated in the view of the Federal Ministry of Labour, Social Affairs and Consumer Protection (BMASK). The interviews exposed that the regulations about the

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⁴ University of Vienna/ Department for co-operatives: Prof. Dr. Johann Brazda; WU Vienna University of Economics and Business/Resarch Institute for Co-operation and Co-operatives: Prof. Dr. Dietmar Roessl.

⁵ There are approximately 15 new cooperatives per year and e.g. 3.466 private limited companies (GmbHs). See the Statistical Yearbook of the Austrian Economic Chamber, chapter 17 (Start-ups of enterprises). Online available on: http://portal.wko.at/wk/format_detail.wk?AngID=1&StID=357405&DstID=17 (accessed 2010-03-19).


⁷ “7 dwarfs cooperative”. The workshop based on the fairy-tale „Snow white and the 7 dwarfs“. In Summer 2009.

⁸ For more information see Brazda/Blisse: Die Genossenschaft fuer Kinder erzaehlt (Cooperative narrated for kids) in cooperativ 2-3/09, p. 82, Vienna 2009.
involvement of employees do not constitute a dissuasive factor for the establishment of SCEs in Austria. This is backed by the fact that in case of starting up an SCE by natural persons only or natural persons and one legal person and if there are not more than 50 people employed, the provisions will not apply.

Generally, the implementation act of the SCE regulation is considered as very successful by the stakeholders. The fear that the SCE regulation and its implementation could be too complex did not prove to be true.

The major problems and counter-arguments for the foundation of an SCE in Austria based on the research are the lacking necessity and the low level of information about the SCE among lawyers, corporate consultants and the potentially interested public.
3. Overview of national cooperative law

3.1. Sources and legislation features

The Austrian law concerning cooperatives, short GenG, was enacted in 1873. Several amendments have been made; recent ones are the Genossenschaftsrechtsaenderungsgesetz 2006 (law changing the law concerning cooperatives) and the Unternehmensrechtsaenderungsgesetz 2008 (law changing the corporate law).

There are other collaterally laws as well as ordinances concerning cooperatives:

- Genossenschaftsrevisionsgesetz (Austrian Law concerning Cooperative Auditing)
- Verordnung ueber die Pruefungsordnung von Genossenschaftsrevisoren (Ordinance concerning examination regulations for cooperative auditors)
- Genossenschaftsverschmelzungsgesetz (Law concerning the merger of cooperatives)
- Genossenschaftskonkursverordnung (Ordinance concerning bankruptcy of cooperatives)

3.2. Definition and aim of cooperatives

Sect 1 para 1 GenG defines what cooperatives are (see page 19). The law is applicable for associations of an unlimited number of members serving to support acquisitions and commercial activities of their members.

Since the enactment of the Unternehmensrechtsaenderungsgesetz 2008, the GenG (see sect 1 para 3) refers to the purposes mentioned in Art 1 para 3 of the regulation 2003/1435/EC. Therefore, from that point on cooperatives in Austria are able to pursue also a social aim in explicit terms (until then it was also possible, but just implicitly). This is one of the main influences of the regulation 2003/1435/EG on the national law on cooperatives in Austria.

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9 RGBl 70/1873.
12 GenRevG.
13 GenRevPO.
14 GenVerschmG.
15 GenKonkVO.
3.3. Activity

Cooperatives are able to pursue different activities. Sect 1 para 1 GenG enumerates some examples for the possible economic nature of cooperatives: Loan-, Purchase-, Sale-, Consume-, Utilization-, Exploitation-, Construction-, Residential- and Establishment Cooperatives. In a legal regard this enumeration is not significant, since other types of cooperatives like a Production Cooperative (Produktivgenossenschaft) might exist as well.

The Wohnungsgeimennützigkeitsgesetz (WGG – Law concerning the non-profit making of housing) contains some special regulations for Construction-, Residential- and Establishing Cooperatives.

Generally, all economic activities are permitted. There are only some specific laws which enforce a particular legal form for their members like article 12 Apothekengesetz (Pharmacist Law): The business of a pharmacy is possible in the legal form of a partnership in the way of the Unternehmensgesetzbuch16 (UGB – Business Enterprise Code) or as a civil law association (GesBR – Gesellschaft buergerlichen Rechts17). Another example is article 22 of the notary code (Notariatsordnung – NO) which only permits the establishment of a General Partnership (Offene Gesellschaft – OG) or a Partnership by Shares (Kommanditgesellschaft – KG) for a notary association. These rare restrictions do not pose a disadvantage even considering that it is e.g. of course possible that several pharmacies start-up a purchasing cooperative.

3.4. Forms and modes of setting up

Cooperatives in Austria are legal entities which arise by entry in the commercial register18. A cooperative can be set up by at least two persons. Cooperative members join by written declaration.

For incorporation several things are obligatory:

- The firm name (Sect 3 para 1 subpara 1 GenG)
- The statutes in written form (Sect 3 para 1 subpara 2 GenG)
- The entry of the statutes in the commercial register (Sect 3 para 1 subpara 3 GenG)

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17 Sections 1175ff. Austrian General Civil Code (ABGB) stipulate the civil law association.
18 The commercial register is a public index maintained by the regional courts (in Vienna by the Commercial Court Vienna, in Graz by the Regional Court for Civil Affairs Graz).
The admission assurance to the appropriate auditing association (Sect 24 GenRevG)

3.5. Membership
The necessary minimum number of members is two. The statute has to stipulate the requirements for the membership. Individuals as well as private or public legal entities and registered partnerships are possible members of a cooperative. For admission, a written declaration of accession is needed and their acceptance by the cooperative as well as signing at least one cooperative share.

It is possible that the statutes tie the possible membership to certain personal requirements like a special profession or the residence in a certain area. Since the GenRAeG 2006 investing members are allowed (Sect 5a para 2 subpara 1 GenG), if stipulated by the statutes. New members have to achieve the special membership requirements of the statutes, sign a written declaration of accession which then has to be accepted by the cooperative.

3.6. Financial profiles
Because of the idea of an open membership there is no minimum capital and, except for Construction-, Residential- and Establishing Cooperatives\(^{19}\), there is also no legal rule concerning the amount of the shares. Each member has to subscribe at least one share. But it is also possible – if regulated by the statutes – that the members sign more than one share, what also may have an impact on the voting rights. If there is a voting right defined by shares, it also can be limited. E.g. the maximum amount of a vote is 100, also if you sign more shares. The advantage of the voting right by shares is an incentive to sign more shares what then increases the capital of the cooperative.

3.7. Organisational profiles
The Austrian law on cooperatives stipulates two bodies that are obligatory: the General Assembly and the Management Board. If the cooperative has at least 40 employees, a Supervisory Board is obligatory as well.\(^ {20}\) Furthermore, each cooperative has to be a member in an auditing association (Revisionsverband).\(^ {21}\) This is an advantage and disadvantage of

\(^ {19}\) Sect 6 para 1 WGG. The minimum amount of the shares for Construction-, Residential- and Establishing Cooperatives is 218 €.

\(^ {20}\) Sect 24 para 1 GenG. Although a supervisory board is often not obligatory, the OeGV suggests establishing it anyway.

\(^ {21}\) The Genossenschaftsverband (OeGV) and the Raiffeisenverband are the two most important auditing associations for cooperatives in Austria.
cooperatives simultaneously: On the one hand, the legally intended audit guarantees reliability for the cooperative members and their business partners. On the other hand though, in comparison to other legal forms the fees sometimes may cause a problem, in particular for small cooperatives. Nevertheless, it has to be considered that each legal form causes certain fees. E.g. most of the registered associations or companies of limited liability also need cost-causing legal and tax advices or marketing consultancy, although they have not to be member to an association.

The statutes have to stipulate the forms of notice of the General Assembly. E.g. it is possible through a written invitation, email and announcements in newspapers. The period for the announcement must be appropriate. The cooperative agreement can stipulate a (limited) voting right by shares, or, otherwise, each cooperative member casts one vote.\(^{22}\) If the voting right depends on other parameters (like the scope of delivery), it is necessary that the principle of equality is maintained.\(^{23}\) The Management Board is elected by the General Assembly or is nominated by the Supervisory Board (if there is one), if stipulated by the statutes.\(^{24}\) Generally, only cooperatives member are able to be nominated.\(^{25}\) If a legal person is member of the cooperative since the URAeG 2008 it is possible to vote the person who is authorized to represent the legal person. The Management Board consists of at least one person. Their nomination can be revoked by the body of nomination (General Assembly or Supervisory Board) at any time.\(^{26}\) It is very common that the Management Board works honorary.

### 3.8. Registration and control

Cooperatives arise by entry in the commercial register. Therefore, a written cooperative contract (statutes) is essential.\(^{27}\) Sect 5 GenG stipulates what the cooperative contract must contain. Whereas the Austrian law also knows cooperatives with unlimited liability, right now there are only cooperatives with limited liability. Furthermore, each cooperative has to be a member in an auditing association (Revisionsverband)\(^ {28}\). See above, cap. 3.7.

\(^{22}\) Regardless of the numbers of shares the respective member holds.
\(^{23}\) Dellinger: Kommentar zum Genossenschaftsgesetz (Commentary on the Austrian Cooperative Society Act), Lexis Nexis, Vienna 2005, Sect 76.
\(^{24}\) Art 15 para 1 GenG.
\(^{25}\) Dellinger (2005), Sect 15, Rz 10.
\(^{26}\) Sect15 para 2 GenG.
\(^{27}\) Sect 2 para 1 subpara 2 GenG.
\(^{28}\) The Genossenschaftsverband (OeGV) and the Raiffeisenverband are the two most important auditing associations for cooperatives in Austria.
3.9. Transformation and conversion
The GenG does not include any specific rules or regulations on conversions. The Act about the merger of cooperatives (Genossenschaftsverschmelzungsgesetz – GenVG) stipulates in Sect 1 para 1 GenVG that only the merger of cooperatives of the same liability is possible. Sect 9 – 11 GenVG stipulate that in the case of merger all members have a special ending-right.

3.10. Specific tax treatment
There is no specific tax regime for cooperatives in Austria. The cooperative profits are subject to the corporation tax which is 25%. Contrary to limited-liability companies (GmbH), there is no minimum corporation tax for cooperatives if they take no profit.

The taxation of the cooperatives members acts on the income tax (ESiG) for natural persons if the donee is a natural person who keeps the cooperative share in her private property normally the income tax is compensated with the discount of the corporation tax. 29

or on the corporate income tax (KStG) for corporations.

As described above, cooperatives are obliged to be member in an auditing association.

A specific tax problem for cooperatives in Austria is the fact that it is impossible to get recognised as being charitable in the meaning of the Bundesabgabenordnung (BAO – Austrian Federal Tax Code). E.g. limited-liability companies as well as registered associations are able to get the status of “charitable” what means that they are exempt from paying corporation tax. This unequal treatment is hardly maintainable. It continues to be a competitive disadvantage for the legal form of cooperatives. Currently, the Federal Ministry of Finance (BMF) takes the opinion that cooperatives are not able to be charitable because the principal object is the delivery of their members, which apparently is incompatible with the delivery of commonality in the meaning of article 35 BAO. Even when it is now possible to start up a cooperative with social purposes it also should be possible to be charitable in the way of the BAO.

3.11. Existing draft proposing new legislation
Actually there are no existing drafts proposing new legislation concerning cooperatives.

Even the prospective amendments regarding the capital requirements for credit institutions could have an impact to cooperative equity.

29 If the donee is a natural person who keeps the cooperative share in her private property normally the income tax is compensated with the discount of the corporation tax.
3.12. Essential bibliography


Dellinger, Markus: Kommentar zum Genossenschaftsgesetz (Commentary on the Austrian Cooperative Society Act), Lexis Nexis, Vienna 2005.


4. The SCE Regulation and national law on cooperatives

The GenRAeG 2006 among other things provides some adaptations that are necessary in order to introduce the SCE into the existing body of Austrian law: These adaptations include amendments to the Gerichtsgebuhrengesetz (GGG; Court Fee Act), to the Bankwesengesetz (BWG; Banking Act), to the Versicherungsaufsichtsgesetz (VAG; Insurance Supervision Act) and to the Arbeitsverfassungsgesetz (ArbVG, Law Governing the Employment System). 30

The implementation of the SCE regulation within the GenRAeG 2006 as well as the URAeG 2008 also has been the trigger factor for some remarkable changes in the GenG itself. Although the GenG generally is affected by the right of self-regulation (“Satzungsautonomie”), the cooperative associations wanted to ensure with the amendments that national cooperatives stay attractive in comparison to the SCE.

- Section 5a para 2 Z 1 GenG now clarifies that investing members 31 are explicitly allowed to join a cooperative. 32 Unlike article 28 SCEG the GenG does not stipulate a limited voting right of the investing members. This rule is a compulsory rule, what means that the statutes can admit a limitation. 33

- Section 5a para 2 Z GenG creates the possibility that the cooperative agreement can fix a minimum amount that must not fall below the total nominal value of the shares despite the total or partial quitting of members. 34 Prerequisite for this is that the statutes do not exclude the share’s descent. 35 The OeGV has arrogated a possibility to create non-redeemable shares in connection with the possibility to acquire a share in the substance part to make sure that the cooperative’s equity is not reduced in this respect. 36 Now, a kind of voluntarily minimum amount is possible.

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30 See the explanatory remarks of the government bill, ErlRV 1421 BlgNR XXII. GP.
31 I.e. those who do not obtain a benefit or share in the profits from cooperative services.
32 The entry of investing members has been possible in Austria already before the GenRAeG 2006 if stipulated by the statutes.
33 A limitation of the number of the investing members is reasonable because a preponderance of the investing members would be a contradiction to the cooperatives idea. Cf. Hofinger/Zawischa: Das Genossenschaftsrechtshuerverungsgesetz 2006 (The GenRAeG 2006 ), in Die gewerbliche Genossenschaft 1/07, Vienna 2007, p. 31.
36 See OeGV booklet (2008), p. 65.
Section 15 GenG now clarifies that the statutes can permit the nomination of the executive board by the supervisory board.37

Sect 24c – 24e GenG39 stipulates – among other things – the right of access for certain members of the supervisory board and a list of business transactions that acquire the supervisory board’s approval. The provisions are similar to the stock corporation act and the limited liability law. Furthermore, it was adapted linguistically. Within these articles the supervisory board should be increased.

Sect 27 para 3 GenG stipulates that the convention of delegates now already is possible if the cooperative has a minimum number of 500 members.40

Sect 32 GenG now stipulates that the deadline in case of lack of a quorum only is half an hour.41

Sect 88 GenG has put the exceeding of the purpose of the business under penalty. Sect 36 para 4 and 37 to 39 GenG referred to this provision. Such provisions are no longer appropriate, so they have been overruled by the GenRAeG 2006.42

Since the enactment of the Unternehmensrechtsaenderungsgesetz 2008, the GenG in sect 1 para 3 refers to the purposes mentioned in Art 1 para 3 of the regulation 2003/1435/EC. Therefore, from that point on cooperatives in Austria are also able to pursue a social aim in explicit terms.43

Because of the right of self-regulation of cooperatives and the existing legal situation of cooperatives, Austria constitutes an attractive location to set up a cooperative. There are no legal obstacles that seriously hamper the establishment of cooperatives. Potentially inhibitive though is the impossibility for cooperatives of being “charitable” (as described under 3.10.). Particularly if there is a social purpose of the business, legal forms like the registered association (“Verein”) and the limited liability company (“GmbH”) pose an objective competition since they can be “charitable” in the sense of the BAO.

37 See the explanatory remarks of the government bill, ErlRV 467 BlgNR XXIII. GP, p. 39.
38 Generally the executive board is nominated by the general assembly.
39 Sect 24 GenG (the essential amendments happened by the GenRAeG 2006) turned too complex so the URAeG 2008 divided the provisions on several articles.
40 Before that, it was possible until a minimum number of 1000 members. A convention of delegates is not obligatory (compulsory rule).
41 Before this amendment, the deadline has been one hour.
42 See the explanatory remarks of the government bill, ErlRV 1421 BlgNR XXII. GP, p. 24.
43 Until then it was also possible, but just implicitly.
Additionally, the establishment of a registered association is much easier and cheaper. The registered association in fact is able to generate a profit, although this profit cannot be distributed to the members of the association. Any profit must be used for the non-commercial statutory objects. For a certain level of economic activities though the legal form of a cooperative is without question much more suitable than the registered association.44

One of the main features of cooperatives – the legal obligation to be a member of an auditing association – could be considered as a disadvantage because of the related costs. Nevertheless, upon closer inspection this fact emerges as one of the big benefits of cooperatives. Even if the cooperative members are not legal or financial professionals, the consulting service given by the cooperatives associations and the independent audit cause legal certainty and therefore offer guarantees for the members as well as for business partners.

A reason why the annual number of new cooperatives is not a very high (approximately 15 per year45) is that the level of information about cooperatives and its potential benefits is to be considered as not very high. Indeed, people (especially in rural areas46) are aware of cooperatives but their various fields of application often are unknown. Consequently, the same applies even more to the SCE.

This difficulty might be due to the fact that most people who want to start up a company consult lawyers or corporate consultants. Unfortunately, these groups are often informed insufficiently about the legal form of cooperatives, since they are not consulted about cooperatives on a regular basis. Advices about starting-up a cooperative and the auditing in Austria are given by the cooperative associations. As a consequence, the basic level of information on cooperatives of potential stakeholders has to be very high in order to even find competent advice about cooperatives and the SCE in particular. Therefore, closer cooperation between the cooperative associations and law firms as well as the WKO might be helpful.

44 In a very similar way this seems to be veritable for the EWIV too.
45 Co-operative business start-ups mainly take place in the areas of energy (e.g. district heating, biomass power plant or solar power works), food marketing and consultancy. If cooperatives which take over community tasks (like children and elderly care) will be able to enforce remain to be seen.
46 This is because of e.g. wine-grower-cooperatives, dairy cooperatives and the presence of regional banks.
5. ANNEXES

A) Names of the interviewees

Mag. Andreas Plammer, BMASK, 2010-02-23
Dr. Renate Hinteregger, OeGV, 2010-02-24
Prof. DDr. Hans Hofinger/Dr. Susanne Riesenfelder, OeGV, 2010-03-08
Mag. Peter Tomanek, Raiffeisen, 2010-03-09
Dr. Manfred Gruenanger/ Dr. Harald Steindl, WKO, 2010-03-10
Dr. Holger Blisse, Vienna University, 2010-03-19

B) List of Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>ABGB</td>
<td>Allgemeines Buergerliches Gesetzbuch (Austrian General Civil Code)</td>
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<td>AktG</td>
<td>Aktiengesetz (Stock Corporation Act)</td>
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<tr>
<td>ArbVG</td>
<td>Arbeitsverfassungsgesetz (Law Governing the Employment System)</td>
</tr>
<tr>
<td>BAO</td>
<td>Bundesabgabenordnungen (Austrian Federal Tax Code)</td>
</tr>
<tr>
<td>BMASK</td>
<td>Bundesministerium fuer Arbeit, Soziales und Konsumentenschutz (Federal Ministry of Labour, Social Affairs and Consumer Protection)</td>
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<tr>
<td>BWG</td>
<td>Bankwesengesetz (Banking Act)</td>
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<tr>
<td>BGBl</td>
<td>Bundesgesetzblatt (Federal Law Gazette)</td>
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<td>BMJ</td>
<td>Bundesministerium fuer Justiz (Federal Ministry of Justice)</td>
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<tr>
<td>GesBR</td>
<td>Gesellschaft buergerlichen Rechts (Civil law association)</td>
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<td>GGG</td>
<td>Gerichtsgebuehrengesetz (Court Fee Act)</td>
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<td>GenG</td>
<td>Genossenschaftsgesetz (Austrian Cooperative Society Act)</td>
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<tr>
<td>GesRZ</td>
<td>Austrian law journal for corporate law</td>
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<tr>
<td>GenVG</td>
<td>Genossenschaftsverschmelzungsgesetz (Austrian Cooperative Societies Merger Act).</td>
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<tr>
<td>GmbHG</td>
<td>Gesetz ueber die Gesellschaft mit beschaenkter Haftung (Limited liability company law)</td>
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<td>NO</td>
<td>Notariatsordnung (Notary Code)</td>
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<tr>
<td>OeGV</td>
<td>Oesterreichischer Genossenschaftsverband (Austrian Association of Cooperatives)</td>
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<tr>
<td>Abbreviation</td>
<td>Full Form</td>
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<tr>
<td>OeRV</td>
<td>Oesterreichischer Raiffeisenverband (<em>Austrian Raiffeisen Association</em>)</td>
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<tr>
<td>RFG</td>
<td>Zeitschrift fuer Recht und Finanzen der Gemeinden (<em>Journal for law and finance of municipalities</em>)</td>
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<tr>
<td>SCE</td>
<td>Societas Cooperativa Europaea</td>
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<tr>
<td>SCEG</td>
<td>SCE Act</td>
</tr>
<tr>
<td>URAeG</td>
<td>Unternehmensrechtsaenderungsgesetz 2008 (<em>Company Law Amendment Act</em>)</td>
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<td>BGBI Nr. 70/2008</td>
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<tr>
<td>VAG</td>
<td>Versicherungsaufsichtsgesetz (<em>Insurance Supervising Act</em>)</td>
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<tr>
<td>VO</td>
<td>Verordnung (<em>Regulation</em>)</td>
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<tr>
<td>WKO</td>
<td>Oesterreichische Wirtschaftskammer (<em>Austrian Federal Economic Chamber</em>)</td>
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</tbody>
</table>
C) Partly translation of the most important provisions of the GenG

Comment: There is no official English translation of the GenG available. The following translation has the purpose only to provide a better understanding.

GenG available under:
http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10001680

§ 1


(3) Genossenschaften können auch die in Art. 1 Abs. 3 der Verordnung 2003/1435/EG über das Statut der Europäischen Genossenschaft (SCE), AB1. Nr. L 207 S. 1, genannten Zwecke verfolgen.

Section 1

(1) This law is applicable for associations of an unlimited number of members serving to support acquisitions and commercial activities of their members (cooperatives) as well as for Loan-, Purchase-, Sale-, Consume-, Utilization-, Exploitation-, Construction-, Residential- and Establishment Cooperatives.

(2) Means of funding can also be the participation of the cooperative in a legal person of company, cooperative or association law or in registered partnerships enterprising in business, if this participation serves to realize the cooperative’s constitutive aim and not mainly to obtain emblems of the capital contribution.

(3) Cooperatives can also pursue the purposes mentioned in sect 1, para 3 of the enactment 2003/1435/EG on the statute of the European Corporation (SCE), AB1. No. L 207 p. 1.
§ 2
(1) Purchase and Commercial Cooperatives can be set up either with unlimited or limited liability of their members.

(2) …
(3) …

Section 2
(1) Purchase and Commercial Cooperatives can be set up either with unlimited or limited liability of their members.

§ 3
(1) Zur Gründung der Genossenschaft ist erforderlich:
1. die Annahme einer Genossenschaftsfirma;
2. die schriftliche Abfassung des Genossenschaftsvertrages (Statuts);
3. die Eintragung dieses Vertrages in das Firmenbuch.
(2) Der Beitritt der einzelnen Genossenschafter geschieht durch schriftliche Erklärung.

Section 3
(1) For incorporation several things are obligatory:
1. The acceptance of the cooperative company
2. The cooperative contract (statutes) in written form
3. The entry of the statutes in the commercial register
(2) Cooperative members join by written declaration.

§ 5a
(1) Die Aufnahme in den Genossenschaftsvertrag bedarf es, wenn die Genossenschaft zulassen will
1. die Ausdehnung des Zweckgeschäfts auf Nichtmitglieder, wobei die sich aus dem § 1 Abs. 1 ergebende Beschränkung ausdrücklich aufzunehmen ist, oder
2. die Beteiligung an juristischen Person des „Unternehmens-, des Genossenschafts- oder des Vereinsrechts oder an unternehmerisch tätigen eingetragenen Personengesellschaften.
(2) Der Genossenschaftsvertrag kann
1. vorsehen, dass Personen, die fuer die Nutzung oder Produktion der Gueter und die Nutzung oder Erbringung der Dienste der Genossenschaft nicht in Frage kommen, als investierende (nicht nutzende) Mitglieder zugelassen werden koennen;


Section 5a

(1) The accession to the cooperative contract (statute) is required if the cooperative wants to allow

1. the expansion of the application-business to non-members, however the limitation mentioned in sect 1 para 1 has to be accepted/incorporated, or

2. the holding of legal persons of company-, cooperative- or association law or of registered partnerships enterprising in business

(2) the cooperative contract is able to

1. provide that people, who are unqualified for the utilization or production of the products and for the cooperative’s utilization and service delivery, are not allowed as investing (not utilizing) members.

2. determine the immediate or mediate basic amount, which is not allowed to fall below the entire amount of the share in the company despite entire or partly withdrawal of members, if the cooperative contract does not exclude the endorsement of the share and other member’s credits which are attributed due to cooperative relations. The entirely or partly withdrawn member’s interest on repayment of their company credit is interrupted as long and as far as the withdrawal would entail the subsidence of the share in the company’s nominal amount below the basic amount. Within one group of people, who are entirely or partly retired at a certain time, a subsequent partial repayment is possible aliquot according to the amount of the refunded company credit.
§ 15
(1) Jede Genossenschaft muss einen von der Generalversammlung aus der Zahl der Genossenschafter oder deren vertretungsbefugter Organmitglieder zu wählenden Vorstand haben. Der Genossenschaftsvertrag kann stattdessen die Bestellung durch den Aufsichtsrat vorsehen.
(2) …
(3) …

Section 15
(1) Each cooperative is required to have a management board which is voted at the general assembly either by the cooperative members themselves or by board members who have the cooperative members’ authority. The cooperative contract can determine instead that the appointment is done by the supervisory board.

§ 24
(2) …
(3) …

Section 24
(1) The cooperation has to nominate the supervisory board if it permanently engages at least 40 employees. The supervisory board has to consist of at least three members, provided that the cooperative contract does not determine a higher number. The members of the supervisory board have to be elected by the general assembly from the cooperative members and the members of an organ/administrative body. The members of the management board are
excluded. The nomination of a supervisory board member is revocable by the general assembly at any time.

§ 27

(1) …
(2) Jeder Genossenschafter hat hiebei eine Stimme, wenn nicht der Genossenschaftsvertrag etwas anderes festsetzt.
(3) …

Section 27

(2) Every cooperative member has a voice, provided that the cooperative contract does not determine something else.

§ 76

Jedes Mitglied einer mit beschränkter Haftung errichteten Genossenschaft haftet im Falle des Konkurses oder der Liquidation für deren Verbindlichkeiten, insofern der Gesellschaftsvertrag nicht einen höheren Haftungsbetrag festsetzt, nicht nur mit seinen Geschäftsanteilen, sondern auch noch mit einem weiteren Betrag in der Höhe derselben.

Section 76

In the case of insolvency or liquidation, every member of a cooperative with limited liability is liable for its obligations, not only with his/her share in the company but also with an additional amount of the same value, provided that the cooperative contract does not determine a higher liability amount.