



Procedure file

Basic information		
CNS - Consultation procedure Regulation	1991/0388(CNS)	Procedure completed
Statute for a European cooperative society		
See also 2020/0073(APP)		
Subject 3.45.07 Social economy, mutual societies, cooperatives, associations		

Key players			
European Parliament			
Council of the European Union			
	Council configuration	Meeting	Date
	Agriculture and Fisheries	2524	22/07/2003
	Employment, Social Policy, Health and Consumer Affairs	2512	02/06/2003
	Employment, Social Policy, Health and Consumer Affairs	2431	03/06/2002
	Competitiveness (Internal Market, Industry, Research and Space)	2426	21/05/2002
	Competitiveness (Internal Market, Industry, Research and Space)	2412	01/03/2002
	Social Affairs	2102	04/06/1998
	Social Affairs	2087	07/04/1998
	Competitiveness (Internal Market, Industry, Research and Space)	2079	30/03/1998
	Social Affairs	2060	16/12/1997
	Competitiveness (Internal Market, Industry, Research and Space)	2051	27/11/1997
	Competitiveness (Internal Market, Industry, Research and Space)	2007	21/05/1997
	Social Affairs	1999	17/04/1997
	Social Affairs	1892	05/12/1995
	Competitiveness (Internal Market, Industry, Research and Space)	1769	16/06/1994

Key events			
05/03/1992	Legislative proposal published	COM(1991)0273	Summary
10/04/1992	Committee referral announced in Parliament		
03/12/1992	Vote in committee		Summary
03/12/1992	Committee report tabled for plenary, 1st reading/single reading	A3-0001/1993	

19/01/1993	Debate in Parliament		
20/01/1993	Decision by Parliament	T3-0014/1993	Summary
06/07/1993	Modified legislative proposal published	COM(1993)0252	Summary
23/11/1993	Vote in committee		
23/11/1993	Committee report tabled for plenary confirming Parliament's position	A3-0364/1993	
02/12/1993	Decision by Parliament	T3-0681/1993	Summary
16/06/1994	Debate in Council	1769	Summary
05/12/1995	Debate in Council	1892	
17/04/1997	Debate in Council	1999	
21/05/1997	Debate in Council	2007	
27/11/1997	Debate in Council	2051	
16/12/1997	Debate in Council	2060	
30/03/1998	Debate in Council	2079	
07/04/1998	Debate in Council	2087	
04/06/1998	Debate in Council	2102	
01/03/2002	Debate in Council	2412	
12/07/2002	Amended legislative proposal for reconsultation published	09923/2002	Summary
11/10/2002	Formal reconsultation of Parliament		
23/04/2003	Vote in committee		Summary
23/04/2003	Committee report tabled for plenary, reconsultation	A5-0146/2003	
13/05/2003	Debate in Parliament		
14/05/2003	Decision by Parliament	T5-0209/2003	Summary
22/07/2003	Act adopted by Council after consultation of Parliament		
22/07/2003	End of procedure in Parliament		
18/08/2003	Final act published in Official Journal		

Technical information

Procedure reference	1991/0388(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	Regulation
	See also 2020/0073(APP)
Legal basis	EC Treaty (after Amsterdam) EC 308; EC Treaty (after Amsterdam) EC 095;

	EC before Amsterdam E 100A
Stage reached in procedure	Procedure completed

Documentation gateway					
Legislative proposal		COM(1991)0273	05/03/1992	EC	Summary
Economic and Social Committee: opinion, report		CES0640/1992 OJ C 223 31.08.1992, p. 0042	26/05/1992	ESC	Summary
Committee report tabled for plenary, 1st reading/single reading		A3-0001/1993 OJ C 042 15.02.1993, p. 0003	03/12/1992	EP	
Text adopted by Parliament, 1st reading/single reading		T3-0014/1993 OJ C 042 15.02.1993, p. 0075-0103	20/01/1993	EP	Summary
Modified legislative proposal		COM(1993)0252	06/07/1993	EC	Summary
Reconsultation		COM(1993)0570	10/11/1993	EC	
Committee final report tabled for plenary, 1st reading/single reading		A3-0364/1993 OJ C 342 20.12.1993, p. 0002	23/11/1993	EP	
Text adopted by Parliament confirming position adopted at 1st reading		T3-0681/1993 OJ C 342 20.12.1993, p. 0015-0030	02/12/1993	EP	Summary
Amended legislative proposal for reconsultation		09923/2002	12/07/2002	CSL	Summary
Committee final report tabled for plenary, reconsultation		A5-0146/2003	23/04/2003	EP	
Text adopted by Parliament after reconsultation		T5-0209/2003 OJ C 067 17.03.2004, p. 0136-0175 E	14/05/2003	EP	Summary
Follow-up document		COM(2012)0072	23/02/2012	EC	Summary

Additional information	
European Commission	EUR-Lex

Final act
Regulation 2003/1435 OJ L 207 18.08.2003, p. 0001-0024 Summary

Statute for a European cooperative society

PURPOSE : to present a proposal for a Council Regulation on the Statute for a European Cooperative Society (SCE). CONTENT : the essential aim of the proposed Regulation is to enable the establishment of an SCE, a European legal instrument, by physical persons resident in different Member States or legal entities established under the laws of different Member States. It will also make possible the establishment of an SCE by merger of two existing cooperatives, or by conversion of a national cooperative into the new form without first being wound up, where that cooperative has its registered office and head office within one Member State and an establishment or subsidiary in another Member State. The aim of this proposal is to facilitate cooperatives wishing to engage in cross-border business, by making legislative provision which takes account of their specific features. The members' contributions are to form a capital, divided into shares which carry entitlement to a return. The SCE is to have legal personality from the day of its registration in the State in which it has its registered office. The SCE's registered office, which is to be specified in its rules, must be within the Community and must be in the same place as its central administration. An SCE may be set up by any two or more legal entities formed under the law of a Member State, provided they have their registered offices and central administrations in at least two different Member States. The proposal defines the constitutional rules, the workings, the responsibility and the winding up of the European cooperative societies.?

Statute for a European cooperative society

The European Parliament gave its opinion at first reading on three Commission proposals for regulations concerning the statutes for a European cooperative society, a European mutual society and a European association and on three proposals for directives supplementing these statutes in relation to the role of workers. Parliament gave its backing to these proposals with some amendments relating, in particular, to the names of the entities, the criteria governing their formation, the methods for the calling of meetings and the statutory powers of the general meetings as well as their legal and financial capacities. Parliament also expressed its support as regards the role of workers but tabled several amendments relating to worker information, consultation and participation. ?

Statute for a European cooperative society

The Commission's modified proposal reflected, in whole or in part, 17 of the 29 amendments proposed by Parliament, including, in particular: - the loss of member status as a result of death or bankruptcy; - the impossibility of the statute requiring acquisition of more than one share in order to accede to member status, where the majority at the general meetings is reserved to members who are natural persons, and if the statute includes an obligation to subscribe associated with members' participation in the activities of the European cooperative society; - an increase in capital by incorporation of all or some of the divisible reserves, on a proposal by the management board or administrative board, following a decision by the general meeting; - the possibility of plural voting, subject to specified conditions, where the European cooperative society is not exclusively made up of natural persons; - the broadening of the means of financing the European cooperative society to include those open to cooperatives not only in the State of the registered office but also in those where it may have places of business; - the principle of impartial devolution of assets in the event of liquidation; - various amendments specifying the functioning of the organs. In addition, the Commission, at the urging of the Member States, tightened the conditions and arrangements governing the transfer of the ECS from one Member State to another. ?

Statute for a European cooperative society

\$summary.text

Statute for a European cooperative society

To recall, the Commission submitted its first proposal for two instruments governing the European Cooperative Society (SCE) in March 1992 and amended proposals in July 1993. The proposals were inspired by those on the two instruments governing the European Company (SE), proposed initially by the Commission in 1970. After agreement had been reached on the SE in December 2000, the Swedish Presidency presented revised texts of the two instruments governing the European Cooperative Society in March/April 2001, largely based on those agreed for the SE. The Regulation governs the statute of the European Cooperative Society. The Directive governs the involvement of employees in the society. On 6 June 2001 the Council agreed on a general approach in respect of the two instruments. The Commission's proposals for the Regulation and the Directive were based on Article 100a (now 95) TEU, and Article 54 (now 44) TEC respectively. At the time, these articles provided for the co-operation procedure. Once the Maastricht Treaty came into force, proposals made under them became subject to the co-decision procedure. On this basis, the European Parliament delivered its first opinion on 20 January 1993, confirmed them on 2 December 1993 and once again on 27 October 1999. This reconsultation of the proposed Council Regulation on the Statute for a European Cooperative Society has been published to make clear to the Parliament that these proposals shall now use Article 308 as their legal basis which provides for Council unanimity and the consultation of the European Parliament. ?

Statute for a European cooperative society

The committee adopted the report by Evelyne GEBHARDT (PES, D) tabling one amendment to the proposal with the aim of ensuring that its legal basis was such as to make it subject to codecision procedure and not consultation procedure. It cited the case-law of the Court of Justice, which stated that Article 308 of the EC Treaty (which was here being proposed by the Council) could be used as the legal basis for a measure only where no other provision of the Treaty gives the Community institutions the necessary power to adopt the measure in question. The committee argued that the proposal should in fact be based on Article 95 (formerly Article 100a, on which the proposal was originally based), which provides for the approximation of Member States' laws and administrative provisions with a view to the establishment and functioning of the internal market. It maintained that Article 95 was a "lex specialis" in relation to Article 308 and constituted the correct legal basis for a regulation that was essentially aimed at harmonising Member States' laws, and hence reducing legal obstacles to the operation of the internal market, rather than creating new "supranational" law. ?

Statute for a European cooperative society

The European Parliament adopted, by 440 votes for, 12 votes against and 25 abstentions, the report by Mrs Evelyne GEBHARDT (PES, D). MEPs adopted a key amendment to the proposal with the aim of ensuring that its legal basis is such as to make it subject to the codecision procedure and not the consultation procedure. They argue that the proposal should in fact be based on Article 95 and not on article 308. It maintains that Article 95 is a "lex specialis" in relation to Article 308 and constituted the correct legal basis for a regulation that was essentially aimed at harmonising Member States' laws, and hence reducing legal obstacles to the operation of the internal market, rather than creating new "supranational" law. MEPs also adopted amendments seeking to ensure proper information and consultation procedures and full

transparency regarding any changes in the structure of the ECS, in particular with regard to employee's participation. It also states that employees' rights with regard to information, consultation and participation shall under no circumstances be less favourable than those applicable before the merger or the conversion of a ECS.?

Statute for a European cooperative society

PURPOSE : to establish the European Cooperative Society. **LEGISLATIVE ACT :** Council Regulation 1435/2003/EC on the Statute for a European Cooperative Society (SCE). **CONTENT :** This Regulation provides cooperatives with adequate legal instruments capable of facilitating the development of their cross-border activities. It is closely linked to Regulation 2003/72/EC. (Please see CNS/1991/0389). The Regulation defines cooperatives as primarily groups of persons or legal entities with particular operating principles that are different from those of other economic agents. These include the principles of democratic structure and control and the distribution of the net profit for the financial year on an equitable basis. These particular principles include notably the principle of the primacy of the individual which is reflected in the specific rules on membership, resignation and expulsion, where the "one man, one vote" rule is laid down and the right to vote is vested in the individual, with the implication that members cannot exercise any rights over the assets of the cooperative. A European cooperative society ("SCE") will have as its principal object the satisfaction of its members' needs and/or the development of their economic and/or social activities, in compliance with the following principles: - its activities should be conducted for the mutual benefit of the members so that each member benefits from the activities of the SCE in accordance with his/her participation, - members of the SCE should also be customers, employees or suppliers or should be otherwise involved in the activities of the SCE, - control should be vested equally in members, although weighted voting may be allowed, in order to reflect each member's contribution to the SCE, - there should be limited interest on loan and share capital, - profits should be distributed according to business done with the SCE or retained to meet the needs of members, - there should be no artificial restrictions on membership, - net assets and reserves should be distributed on winding-up according to the principle of disinterested distribution, that is to say to another cooperative body pursuing similar aims or general interest purposes. The introduction of a European legal form for cooperatives, based on common principles but taking account of their specific features, will enable them to operate outside their own national borders in all or part of the territory of the Community. The essential aim of this Regulation is to enable the establishment of an SCE by physical persons resident in different Member States or legal entities established under the laws of different Member States. It will also make possible the establishment of an SCE by merger of two existing cooperatives, or by conversion of a national cooperative into the new form without first being wound up, where that cooperative has its registered office and head office within one Member State and an establishment or subsidiary in another Member State. **ENTRY INTO FORCE :** 18/08/03. **DATE FOR TRANSPOSITION :** 18/08/06.?

Statute for a European cooperative society

The Commission presents a report on the application of Council Regulation (EC) No 1435/2003 on the Statute for a European Cooperative Society (SCE Regulation). The SCE Regulation is complemented by Council Directive 2003/72/EC on the involvement of employees in the SCE (SCE Directive). The deadline for adapting national legislation to the Regulation and Directive on the SCE was set for 18 August 2006.

Application: in November 2011, 24 SCEs were registered in the 30 EU/EEA Member States, as follows: five in Italy; seven in Slovakia; one each in France, Liechtenstein, the Netherlands, Spain and Sweden; three in Hungary, two in Germany and two in Belgium. The SCE Regulation was due to enter into force in 2006. However, a large majority of Member States failed to meet this deadline. As of December 2011, three Member States had not yet taken the necessary steps to ensure the effective application of the Regulation.

General trend: according to the professional organisations, there is no general trend applying to all cooperatives. When deciding whether to create a national cooperative or an SCE, or when assessing the best country in which to register an SCE, one of the most important issues to consider is taxation. The SCE Statute however, does not regulate taxation, since this is governed by the laws of the country where the SCE is based. Thus, the taxation of cooperatives revenues and corporate tax, taxation of profits or surpluses within the hands of the co-operators and taxation of indivisible reserves still differs from one country to another.

After taxation, the other issues to consider - in descending order of importance - are national labour law requirements, and the complexity and relative strictness of the national legislation on cooperatives. When deciding where to register a cooperative, business people will also prefer a country with good communication networks and a business-friendly administrative environment.

A consultation with stakeholders has revealed several problems in applying the SCE Regulation. These apply to both setting up and running an SCE.

The most significant problem for setting up SCEs is lack of awareness about the SCE among the business community. The most important negative drivers are set-up costs, the complex procedures to be followed (because of the numerous references to national law) and legal uncertainty as to which law applies in each case.

A number of stakeholders also see the minimum capital requirement of EUR 30000 as an obstacle, at least for natural persons wishing to set up small SCEs in order to cooperate across borders. However, the alternative view is that having sufficient capital shows that a business is serious.

Some respondents consider the rules on employee involvement as a negative driver as, in their view, they are cumbersome and complex. These rules are also considered disproportionate where only few employees are concerned. However, workers' organisations and other respondents do not point to problems in this area.

Reasons for the relative lack of success of the SCE Statute: it is argued that the SCE statute has been relatively unsuccessful not only because it is complex but also mainly because firms that choose to operate as a cooperative tend to be well anchored in their local territory. After all, the purpose of a cooperative is to serve the members who participate directly in the democratic management of the firm.

The overwhelming majority of cooperatives are small businesses operating within national borders. A number of stakeholders organisations therefore doubt whether the SCE statute offers any advantage. In addition, people setting up cooperatives tend to rely on their own national laws, which they know better.

Simplification: all stakeholders tend to believe that the complexity of the instrument is a major obstacle to the success of the SCE. The

European organisation representing all national and sectoral federations of cooperatives in the EU says that national cooperative laws seem simpler and more flexible. According to several stakeholders, the complexity of the Regulation (with its multiple references to national legislation) deters not only cooperatives but also other types of firm that might otherwise be interested in organising their activities through an SCE.

Specific issues and possible amendments: the following points stand out:

- the question of whether to allow the head office or main administration of an SCE to be located in a country other than that of its registered office does not seem to be of concern to the cooperative movement. There were no comments on this point from stakeholders. Cooperatives are enterprises with strong links to local communities and need to maintain a strong relationship with the territories in which they operate, just as traditional capital companies do;
- the question of whether to allow the articles of association of an SCE to deviate from local laws on cooperatives is an issue that preoccupies all stakeholders. Opinion is divided on whether SCEs should be given more autonomy from national laws. The majority of respondents believe that the SCE Regulation should give cooperative members the flexibility to choose the governance model and structure that will best serve their objectives and needs. However, a number expressed serious reservations, saying that this autonomy may allow an SCE to deviate from the principles and values of the cooperative business model. Respondents also said that SCEs should not be exempt from mandatory rules on the protection of minority members' or employees rights;
- the questions on the division of an SCE into two or more national cooperatives and on remedies if a merger is cancelled do not seem to concern cooperatives, at least until now. As of December 2011, no SCE appears to have been created by merger.

The Commission intends to consult stakeholders in 2012 on whether and how to simplify the SCE Regulation and will ask:

- whether individual articles should be simplified by deleting and replacing the references to public company law;
- whether the SCE Regulation can be made more independent of national laws.

In a broader context, the question of the European legal forms, such as the SE or the SCE, and the need for their review also forms part of the ongoing reflection on the future of EU Company Law. The results of this reflection will help the Commissions assessment on the necessity and, if appropriate, on the instruments to be used in order to meet the demand of business in Europe for a more level playing field, better regulation and simplification.